

Agent shall countersign the emigrant's copy of the contract, and the Emigration Agent shall make out and deliver to the emigrant an embarkation pass signed by the Emigration Agent, and countersigned by the Protector, stating the name and the age of the emigrant and the name of his father, and certifying that he has been duly registered for emigration to the Straits Settlements.

29. If the Protector of Emigrants considers that any emigrant, not being an emigrant recruited in the division of the district in which the town of Negapatam is situated, is physically unfit to emigrate, and that he has not dishonestly represented himself as physically fit;

or that any such irregularity has occurred in the recruitment of any such emigrant, as makes it just to vacate the contract;

or if the Emigration Agent refuses, without the consent of the Protector, to countersign the emigrant's copy of the contract as required by section twenty-eight, or to be bound by the contract;

the Protector of Emigrants may order the Emigration Agent or the recruiter with whom the contract was made, forthwith to pay to him such reasonable sum as is necessary to enable such emigrant to return to the place where his contract was registered, and may take any steps he thinks necessary for the conveyance of such emigrant to such place.

30. On failure of the Emigration Agent or of such recruiter for twenty-four hours to comply with an order of the Protector for the payment of any such sum, the Protector may pay the same to, or on behalf of, the emigrant.

Every sum so paid shall be recoverable by the Protector, with six per cent. per annum interest from the date of payment, from the Emigration Agent, or from such recruiter, as money paid to the use of such Emigration Agent or recruiter.

No further proof shall be required by any Court in any such case than that the Protector gave such Emigration Agent or recruiter an order to pay such money, and that the Emigration Agent or recruiter for a space of twenty-four hours made default in complying therewith.

31. Every emigrant as aforesaid who, from his state of health, is, in the opinion of the Protector, unfit to undertake the journey back to the place where his contract was registered, shall, in addition to being conveyed back at the expense of the Emigration Agent or recruiter, be entitled to continue in the depôt, and to be fed, clothed, lodged and attended to there and at the expense of the Emigration Agent until such time as the Protector otherwise orders.

32. In every case in which the Emigration Agent refuses, without the consent of the Protector, to countersign, or be bound by a contract registered under section nineteen, or is chargeable with a breach of any duty which such contract expressly or by implication imposes upon him, the Protector may, if he thinks fit, institute a suit on behalf of the emigrant against the Emi-

gration Agent for the recovery of damages for the breach of such contract.

In every such suit the contract entered into by the recruiter shall be deemed to have been entered into by, and to be binding on, the Emigration Agent.

#### VIII.—EMIGRANT VESSELS.

33. No Master or other person in charge of a vessel shall receive on board such vessel any emigrant unless such vessel has been licensed, under the law for the time being in force relating to the carriage by sea of Native passengers, to carry passengers from the territories under the Government of Fort Saint George to the Straits of Malacca, and unless the Master of such vessel has obtained a certificate from the Protector of Emigrants authorizing him to receive on board the number of emigrants specified therein.

No such certificate shall be granted by the Protector of Emigrants unless he has satisfied himself that the vessel has been licensed as aforesaid, and that provisions and water for the number of emigrants to be specified in the certificate according to the scale prescribed under such law have been actually put on board such vessel.

34. On embarkation every emigrant shall deliver to the Master of the vessel the embarkation pass granted to him under section twenty-eight, and the Master shall not receive any emigrant on board unless he delivers up such pass.

35. The Emigration Agent shall be personally present at the embarkation of all emigrants, and shall see that the Master duly examines the passes of the emigrants, and shall himself also examine such passes.

The Emigration Agent shall not permit any emigrant to remain on board who has not a pass.

36. The Master of every vessel carrying emigrants shall, after the embarkation of the emigrants, and before the departure of the vessel, give to the Emigration Agent a list signed by himself of all emigrants on board, and shall retain a counterpart of such list signed by the Emigration Agent.

A copy of such list signed by the Emigration Agent and Master shall be sent to the Protector of Emigrants before the vessel sails.

#### IX.—SUPPLEMENTARY POWERS.

37. Whenever the Governor-General in Council has reason to believe that proper measures have not been taken for the protection of emigrants and the enforcement of the engagements entered into with them immediately upon their arrival at the Straits Settlements, or during their residence therein, the Governor-General in Council may, by a notification published in the *Gazette of India*, declare that emigration to the said Settlements shall cease from a day to be specified in such notification.

When any notification has been published under this section, emigration and the making of contracts to emigrate to the Straits Settlements shall be unlawful from the day specified in such notification.

38. Such notification may be revoked in like manner at the discretion of the Governor-General in Council, and thereupon emigration to the said Settlements shall again be allowed from a day to be specified in the revocation.

From the day so specified all the provisions of this Act authorizing emigration to the said Settlements shall be revived, and have the same effect as if such emigration had not been suspended, except as to acts done, offences committed, and proceedings commenced, during the time of such suspension.

#### X.—OFFENCES.

39. Whoever, except under and in conformity with the provisions of this Act, engages or attempts to engage any Native of India to emigrate,

or whoever engages or attempts to engage any Native of India to enter into any such contract as is hereby declared illegal,

or, not being a recruiter duly licensed under this Act, acts or is employed as a recruiter of labourers,

or being a duly licensed recruiter, removes or attempts to remove any emigrant whom he engages in any district from such district without the contract having been duly registered under section nineteen,

shall be punished with imprisonment, which may extend to six months, or with fine not exceeding five hundred rupees, or with both.

40. Whoever, by means of intoxication, violence, fraud, or false pretences, causes or induces or attempts to cause or induce any Native of India to emigrate or to enter into any contract to emigrate, or into any such contract as is hereby declared illegal, or to proceed to the said Settlements without having entered into any contract, shall be punished with imprisonment, which may extend to three years, or with fine or with both.

41. Whoever, without lawful authority, issues any written order to the police to assist himself or any other person to procure labourers to proceed to the said Settlements, or falsely represents that such labourers are required by the Government, or are to be engaged on behalf of the Government, shall be liable to a fine not exceeding five hundred rupees.

42. Any Master of a vessel not licensed as provided in section thirty-three who knowingly receives on board, for conveyance to the said Settlements, any emigrant or person who has entered into a contract hereby declared illegal, and any Master of a vessel licensed as aforesaid, who knowingly receives any emigrant as aforesaid without having previously obtained a certificate under the said section, or in excess of the number specified in such certificate,

shall be liable for each emigrant or person so received to imprisonment for a period not exceeding three months, and also to a fine not exceeding two hundred rupees, and the vessel shall be liable to be forfeited.

43. Any Master of a vessel who receives on board such vessel any emigrant for the said Settlements and fails to comply with the requirements of sections thirty-four and thirty-six, shall be liable to a fine not exceeding two hundred rupees.

44. Any Master of a vessel who, having cleared such vessel for the said Settlements, takes on board any emigrant not entered in the list mentioned in section thirty-six, shall be liable to a fine not exceeding two hundred rupees for every emigrant so taken on board.

45. All the powers vested by law in the officers of Customs in regard to the searching and detention of vessels, or otherwise, for the prevention of smuggling on board thereof, may be exercised by such officers for the prevention and detection of the illegal embarkation of emigrants on board vessels bound for the said Settlements and of other offences against this Act.

46. All prosecutions under this Act shall be instituted by the Emigration Agent, or by the Protector of Emigrants, or by an officer appointed for the purpose by the Local Government.

#### XI.—MISCELLANEOUS.

47. Nothing in this Act shall apply to any vessel in the service of the Lords Commissioners of the Admiralty, or to any of Her Majesty's vessels.

48. Nothing in this Act shall apply to any contract with, or the emigration of, any Native seaman, or other person who of his own free will contracts to navigate or serve on board of any vessel, or who embarks on board such vessel in pursuance of such contract, or any person who contracts to serve as a menial servant only and who embarks as such menial servant.

49. The Emigration Agent and all persons employed by him and the Protector of Emigrants shall be deemed to be public servants within the meaning of the Indian Penal Code.

#### THE FIRST SCHEDULE.

(See Section 13.)

Office of the Protector of Emigrants at the Port of Negapatam.

A. B. described in the Roll annexed is hereby licensed under the Straits Settlements Emigration Act, 1876, to be a recruiter of labourers. [Here set out the local limits within which the recruiter is licensed to act.]

This license will be in force for only from this date, unless previously cancelled.

(Sd.) C. D.,  
Protector of Emigrants.

Dated the      day of



*Descriptive Roll.*

Name.	Father's name.	Age.		Caste.	Colour.	Height.		Distinguishing marks.	Name of village and district to which he belongs.
		Years.	Months.			Feet.	Inches.		

## THE SECOND SCHEDULE.

(See Section 18.)

I hereby certify that I have this day examined A. B., and that he is, to the best of my belief and judgment, in a fit state of health, and able, in point of physical condition, to proceed to the Straits Settlements [and to work there\*].

(Sd.) C. D.,

(Here add designation of examining officer.)

\* These words to be omitted in case of women and children not engaging for labour.

## STATEMENT OF OBJECTS AND REASONS.

The circumstances which make special legislation necessary to regulate emigration from the Madras Presidency to the Straits Settlements were fully explained in Council on the 6th June 1872, when leave was asked to introduce the Bill which passed as Act XIV of 1872. The Bill then introduced was intended merely to make temporary provision for a pressing emergency, and it was stated that a further measure to make permanent provision, in all requisite detail, for emigration to the Straits was then under preparation in communication with the Colonial Government and would afterwards be introduced. Some time, as might have been expected, has passed in arranging with the Government of the Straits the details of the present Bill and of the corresponding Ordinance intended to be passed by the Straits Legislative Council.

2. The law of the Straits Settlements has either been, or will soon be, placed on a permanent footing, and it is desirable that no further delay should take place in carrying out the legislative requisite here.

3. The present Bill, it will be seen, is based on the Indian Emigration Act, 1871. It differs from that Act, however, in two important respects. In the first place, the provisions it contains regarding the conveyance of emigrants to the depôt, the equipment of emigrant vessels, the embarkation of the emigrants, &c., are of a less detailed and stringent nature than the corresponding provisions of the Act of 1871. As was observed in the discussions which led to the passing of Act XIV of 1872, it would be absurd to hamper emigration to a Colony which may be reached in eight or ten days with regulations designed for a voyage like that to the West Indies.

4. The other point in which the present Bill differs from the Act of 1871, (and on this point it is more stringent than the Act of 1871) is in regard to contracts between recruiters and emigrants. The conditions of emigration from Madras to the Straits Settlements are somewhat different from those which prevail in other Colonies drawing their supplies of labour from India. The law in these other Colonies places upon the Government the responsibility for the fulfilment of the conditions under which the emigrant leaves his home; the immigrants are received by Government Agents on their arrival, and allotted to employers by these Agents; contracts are made on their behalf by Government, and Government undertakes to provide them with a free passage to India on the completion of their term of service, or sooner if they become disabled.

5. In the Straits Settlements, on the other hand, the contract has hitherto been confined to the emigrant and the individual employer; and the function of Government has been merely to watch over its due fulfilment by both parties. It is still intended that contracts shall be made in the first instance between emigrants and individual employers; and therefore it becomes specially necessary in the case of an emigrant to the Straits to make sure that the contract entered into by him before he leaves India distinctly provides for those points on which the Government of India is in the habit of insisting as essential. Hence the additional rules regarding the form and contents of contracts laid down in sections fifteen and sixteen of the present Bill.

6. It is however desired by the Government of India that the Government of the Straits Settlements shall guarantee to emigrants the performance of certain important conditions of their contract, if the employers fail to perform them. It is also thought expedient to declare expressly that contracts made in Madras by Natives for repayment of money in the Straits Settlements, in consideration of assistance to leave India, shall be void except for the purpose of redeeming their contracts to work.

7. It will be observed that the present Bill proposes to repeal Act XIV of 1872, and thereby, so far as regards all India except Madras, to remit the Straits Settlements to the position they were in before the passing of that Act. That is to say, as regards all India except the Madras Presidency, emigration to the Straits Settlements will not be lawful, and cannot be made lawful except under the provisions of the Emigration Act of 1871. The reason for this state of things will be found stated in the proceedings of Council before referred to. The peculiarities of the labour traffic between Madras and the Straits Settlements are its long duration, the existence of a large Tamil population in the Straits, and the proximity of the two countries. These circumstances do not affect any part of India except Madras.

A. HOBHOUSE.

SIMLA;  
The 10th September 1876.

WHITLEY STOKES,  
Secy. to the Govt. of India.



# The Calcutta Gazette.

WEDNESDAY, OCTOBER 18, 1876.

## PART VI.

### Bill of the Legislative Council of India.

GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

THE following further report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor-General of India for the purpose of making laws and regulations, on the 21st September 1876:—

We, the undersigned Members of the Select Committee to which the Bill for consoli-

Despatch from Secretary of State, No. 4, dated 4th February 1875.  
From Sheriff of Calcutta, No. 50, dated 15th April 1875.  
Office Memo. from Military Department, No. 181J., dated 9th June 1875, and enclosures.  
Despatch from Secretary of State, No. 34, dated 3rd June 1875.  
From certain inhabitants of Farrukhabad, dated 6th September 1875.  
Endorsement, Home Department, No. 1388J., dated 7th September 1875, forwarding—  
Translation of an opinion by Ganpant Rao Yeswant of Satara.  
Observations by J. Pitt Kennedy, Esq., Standing Counsel, dated 20th September 1875.  
From Government, North-Western Provinces, No. 605A., dated 7th October 1875, and enclosure.  
" Government of Bengal, No. 3122, dated 4th November 1875, and enclosures.  
" Officiating Chief Commissioner, Oudh, No. 5200, dated 9th November 1875, and enclosures.  
" Officiating Chief Commissioner, Central Provinces, No. 4071-106, dated 10th November 1875, and enclosure.  
" Officiating Chief Commissioner, British Burmah, No. 1530-194, dated 20th November 1875, and enclosures.  
" Vakils of the Madras High Court, dated 26th November 1875.  
" Chief Commissioner of Oudh, No. 5687, dated 7th December 1875.  
" Registrar, High Court, Calcutta, dated 22nd December 1875, and enclosures.  
" Government of Bombay, No. 144, dated 8th January 1876, and enclosures.  
" Registrar, High Court, Calcutta, No. 62, dated 15th January 1876, and enclosure.  
Endorsement, Department of Revenue, Agriculture, and Commerce, No. 105, dated 8th February 1876, forwarding—  
Letter from Government of Bombay, No. 7194, dated 22nd December 1875.  
From Government of Bengal, No. 470, dated 11th February 1876, and enclosures.  
" Government of Madras, No. 243, dated 12th February 1876, and enclosure.  
" Government of Madras, No. 436J., dated 8th March 1876, and enclosures.  
" Government of North-Western Provinces, No. 62, dated 13th April 1876, and enclosures.  
Remarks by L. P. D. Broughton, Esq.  
Note by John Shaw, Esq., Registrar, High Court, Madras, dated 22nd May 1876.  
Observations by the district Moonsif of Travellore, Madras.  
From Government of Bombay, No. 3968, dated 6th July 1876, and enclosures.  
" Government of the Punjab, No. 264C, dated 5th August 1876, and enclosures.  
" Government of Bombay, No. 4022, dated 10th July 1876, and enclosure.

ating and amending the laws relating to the procedure of the Courts of Civil Judicature in British India was referred, have the honor to report that we have considered the Bill and the papers noted in the margin.

#### PRELIMINARY.

We have amended the definition of 'pleader' so as to make it include an attorney of a High Court, and have modified the definition of 'subordinate' Court so as to give district Courts power to control Courts of Small Causes, and we have added definitions of 'Judge,' 'judgment-debtor,'



decree-holder,' 'affidavit' and 'public officer.' With the view of encouraging printing in legal proceedings, we have defined 'written' to include 'printed' and 'lithographed.' We have also amended the definition of 'Foreign Court' so as to exclude the Judicial Committee of the Privy Council. We have saved the Central Provinces Courts Act, 1865, the Punjab Courts Act, 1865, Act XXVII of 1867, and all local laws prescribing a special procedure between landlord and tenant. We have struck out the obsolete references to trials by military officers of small suits in Madras and to District and Military Pancháyats in that Presidency.

#### CHAPTER I.—OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

We have amended the section (13) as to *res judicata* (a) by extending it so as to provide for estoppels against defendants, (b) by explaining, in accordance with a decision in 10 Bom. 293, that any matter which might and ought to have been made ground of defence in a former suit brought by the defendant against the plaintiff shall be deemed to be a matter substantially in issue in such suit, and (c) by providing that decisions alterable on review may be final within the meaning of this section. We have also struck out the clause relating to decisions obtained by arrangement; and we have omitted the illustrations as unnecessary.

#### CHAPTER II.—OF THE PLACE OF SUING.

We have here provided (section 15) for the venue of suits for compensation for wrongs to immoveable property. In section 19 we have provided for giving notice of motions to stay proceedings where the whole cause of action did not arise within the jurisdiction and all the defendants do not reside therein. Where a Court stays proceedings, we have declared (section 20) that the time required for proceeding from that Court to the Court in which the suit is re-instituted shall be excluded in computing the proper period of limitation.

We have provided (sections 21, 22, 23) for giving notice to the plaintiff where the defendant applies to transfer a suit capable of being instituted in different Courts (a) subordinate to the same Appellate Court, or (b) not so subordinate.

#### CHAPTER III.—OF PARTIES, THEIR APPEARANCES, APPLICATIONS AND ACTS.

For sections 27, 28, 29, 30, 40 and 41 of Bill No. III, we have substituted eight sections as to parties, taken, with some modifications, from the Orders framed under the Supreme Court of Judicature Act, 1875.

We have provided (section 37) that certificated mukhtárs holding special powers of attorney may be recognized agents, and declared that in the Punjab, Oudh and the Central Provinces recognized agents shall be such persons as the Local Government may by notification declare. This will enable the Local Government to keep, if it thinks fit, the special rules on this subject now in force in those territories.

We have amended the section (41) relating to the appointment of agents to receive process.

#### CHAPTER IV.—OF THE FRAME OF THE SUIT.

For the sections (44, 45, 46, 47) of Bill No. III, as to joinder of causes of action and multifariousness, we have substituted four sections taken from the Orders above mentioned. When the plaint is amended by excluding any cause of action, we have provided (section 47) that the amendment shall be attested by the Judge's signature.

#### CHAPTER V.—OF THE INSTITUTION OF SUITS.

We have here provided (section 49) that where English is not the language of the Court, the plaint may, with the permission of the Judge and the consent of the defendant, be in English.

Where the plaintiff has allowed a set-off, or relinquished part of his claim, we have required (section 50) that his plaint should state the amount so allowed or relinquished.

We think that, when once issues have been settled, the plaint should not be rejected, returned for amendment or amended; and we have altered section 53 (=52 of Bill No. III) accordingly. We have provided (section 52) for examining the witness to the verification. We have provided (section 54) for the rejection, &c., of the plaint if it is not framed so as to afford ground for a single decision on the whole subject in dispute and for the attestation of the amendments by the signature of the Judge. Where a plaint is returned we have required (section 57) that the endorsement be made by the Judge himself.

When the plaint is admitted we have required (section 58) the plaintiff to present as many copies as there are defendants, unless the Court permits him to file a like number of concise statements of the nature of the claim made, in which case he will file a like number of such statements. We have made provision in the same section for ascertaining the correctness of these copies and statements and of the memoranda of documents filed with the plaint.

Where the plaintiff relies on documents not in his possession, we have provided (section 60) that he shall state in whose possession they are, and where they are in the possession of a stranger to the suit, that he shall take out a summons requiring them to be filed in Court.

From the operation of the section (63) declaring the inadmissibility as evidence for the plaintiff of documents not produced when the plaint is filed, we have excluded documents produced for the examination of the defendant's witnesses or in answer to any case set up by him.

#### CHAPTER VI.—OF THE ISSUE AND SERVICE OF SUMMONS.

We have provided (section 65) that no summons to the defendant to appear and answer shall be issued when he has appeared at the presentation of the plaint and admitted the plaintiff's claim.

Even where railway communication exists, we think that no party should be ordered to appear in person who resides more than two hundred miles from the Court-house, and we altered section 67 (=section 64 of Bill No. III) accordingly.

Where the defendants are partners, we have provided (section 74) for service of the summons on any person having the management of the partnership business.

For the purpose of the section (76) relating to service on an agent by whom the defendant carries on business, we have declared that the master of a ship is the agent of the owner or charterer.

We think (section 81) that the practice of fixing a copy of the summons on the defendant's house should be discontinued, and that when he refuses to receive the copy or sign the acknowledgment of service, and where the serving officer cannot find the defendant, and there is no one on whom service can be made, the serving-officer should return the summons with an endorsement that he has been unable to serve it, and we have required (section 82) the Court to examine him on oath touching the non-service. A similar provision, where the summons is sent to another Court to be served, is made in section 85.

We have inserted a section (84 = section 58 of Act VIII of 1859) providing that when service is substituted by order of the Court, a time shall be fixed for the defendant's appearance.

We have provided (section 95) for the service of notices and orders in writing.

#### CHAPTER VII.—OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

Where neither party appears, we think (section 98) that the suit need not be dismissed when the Judge, for reasons recorded under his hand, otherwise directs. Where the plaintiff does not appear, but the defendant appears and admits part only of the plaintiff's claim, we have provided (section 102) that the Court shall dismiss the suit so far as relates to the remainder. Where the defendant appears and the suit is wholly or partially dismissed owing to the non-appearance of the plaintiff, and the plaintiff applies for an order to set the dismissal aside, we have provided in the same section that the defendant shall be served with notice of the application.

We have added to this chapter sections corresponding with chapter XXIII of Bill No. III as to setting aside decrees by default and *ex parte*.

#### CHAPTER VIII.—OF WRITTEN STATEMENTS AND SET-OFF.

To the section corresponding with section 105 of Bill No. III, we have added a few illustrations and a clause expressly providing that where the defendant, for the purpose of bringing the sum to be set-off within the pecuniary limits of the Court's jurisdiction, intentionally relinquishes any portion of his claim against the plaintiff, the provision in section 43, barring subsequent suits for sums so relinquished by plaintiffs, shall not apply.

We have allowed (section 112) written statements to be received, with the permission of the Court, at any time for the purpose of answering written statements made by the opposite party at the first hearing. And we think (section 115) that the Court should be expressly empowered to examine witnesses as to the signatures to written statements.

We have provided (section 117) that allegations of fact in written statements shall, if not denied, or stated to be not admitted, by the opposite party, be taken to be admitted *for the purposes of the suit*. We have here made no exception of minors and persons of unsound mind, and in this respect, and in the insertion of the words italicised, the section differs from the English Order XIX, rule 17.

#### CHAPTER IX.—OF THE EXAMINATION OF THE PARTIES BY THE COURT.

We have here provided (section 118) that the Court may, if it think fit, put in the course of the examination questions suggested by either party, and (section 119) that the substance of the examination shall be reduced to writing by the Judge and form part of the record.

#### CHAPTER X.—OF DISCOVERY AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

The first seven sections of this chapter are new. They empower parties to deliver interrogatories in writing and provide for inquiring into the propriety of exhibiting them, for striking out improper interrogatories, for making objections to answering interrogatories, and



for compelling persons to answer sufficiently. They correspond with the English Order XXXI, rules 1 to 10.

As to the admission of documents, we have amended section 128 (=113 of Bill No. III) by requiring the demand for admission to be served through the Court.

We have inserted sections (129, 130) empowering the Court to order production during the suit, and to direct parties to make discovery of documents relating to matters in question. And we have amplified (sections 131, 132, 133) the section (114) of Bill No. III relating to inspection of documents.

Where any discovery or inspection is objected to, and the Court is satisfied that the right to such discovery or inspection depends on the determination of any question in dispute in the suit, we have empowered (section 135) the Court to order that question to be first determined.

We have declared (section 136) that any person disobeying any order to answer interrogatories or for discovery or inspection, which has been served personally upon him, shall be deemed guilty of an offence under section 188 of the Penal Code, and that he shall also, if a plaintiff, be liable to have his suit dismissed, and, if a defendant, to be placed in the same position as if he had not defended.

The power which the Courts now possess under Act VIII of 1859, section 138, of sending for papers from non-judicial public offices has, we find, been abused. We have therefore withdrawn this power, and persons applying to the Court to send for papers from judicial records will be required (section 137) to show that they cannot obtain the originals or authenticated copies.

We have expressly confined the section (138) requiring documentary evidence to be in readiness at the first hearing to documents in the possession or power of the parties.

We have provided (section 141) that no document shall be placed on the record unless it has been regularly proved or admitted. In the absence of such a provision questions frequently arise on appeal as to whether a document was in evidence or not.

We have provided (section 144) for the return of documents in suits in which an appeal is not allowed, and in all cases we have authorized their return when certified copies are delivered to the proper officer.

#### CHAPTER XI.—OF THE SETTLEMENT OF ISSUES.

We have exempted (section 146) the Court from the duty of framing and recording issues where the defendant at the first hearing makes no defence. When issues both of law and of fact arise in the same suit, and the Court considers that the case may be disposed of on the issues of law only, we have provided in the same section that the Court shall (not 'may') try the issues of law first. This, we think, will save expense, and will prevent cases being remanded for trial of issues of fact which, in the result, prove wholly irrelevant. As to issues by agreement of parties, we have provided (section 150) that, unless with the special permission of the Judge, no such agreement shall be filed after the Court has recorded issues in the suit.

#### CHAPTER XII.—OF THE DISPOSAL OF THE SUIT AT THE FIRST HEARING.

We have here made no change requiring notice.

#### CHAPTER XIII.—OF ADJOURNMENTS.

We think that the provision in section 138 of Bill No. III that, when the hearing of evidence has once begun, the hearing of the suit shall not be adjourned, except from day to day, might occasionally have led to great inconvenience. We have therefore in section 156 substituted the following: "Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be absolutely necessary for reasons to be recorded by the hand of the Judge."

#### CHAPTER XIV.—OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

We have omitted the power to insert in a summons the names of any number of persons. We have declared (section 165) that the rules contained in chapter VI, as to proof of service, shall apply in the case of all summonses served on persons required to give evidence or produce documents. Before attaching the property of a witness alleged to have absconded, we think that the serving officer should be examined on oath touching the non-service, and we have made a provision to this effect in section 167. We have omitted as useless the provision of the present law as to payment by the Collector of the costs of summoning a witness.

We have provided (section 173) that no witness who has been summoned and attends shall depart, unless he has been examined and the Court has risen, or he has obtained the Court's leave to go.

We have empowered (section 174) the Court to inflict a fine of Rs. 500 on persons failing to prove that they had a lawful excuse for not obeying the summons; and we have provided that non-payment or non-tender of reasonable viaticum shall be deemed a lawful excuse. When any such person is brought before the Court and cannot, owing to the absence

of parties, give the evidence or produce the document which he has been summoned to produce or give, we have by the same section authorized the Court to release him on bail.

We have declared (section 177) that no witness shall be bound to attend in person unless he resides (a) within the local limits of the Court's original jurisdiction, or (b) without those limits and less than fifty or (where there is railway communication) two hundred miles from the Court-house. It is obvious that there should be some limit beyond which parties should not be required to travel even by railway.

We have struck out the six sections (157 to 163 of Bill No. III) relating to the examination of parties as witnesses. This matter seems sufficiently provided for by the declaration contained in section 178 (=section 165 of Bill No. III), that when any party to a suit is summoned as a witness, the rules as to witnesses contained in the Code shall apply to him so far as they are applicable.

#### CHAPTER XV.—OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

We have inserted (section 179) rules as to the right to begin.

We have provided (section 184) that any Judge may take down the evidence in English if the Local Government permits him to do so, or if the parties do not object.

Where the Judge taking down any evidence is removed from the Court before the conclusion of the suit, we have empowered (section 191) his successor to deal with the evidence as if he himself had taken it down.

Where a witness about to leave the jurisdiction is examined immediately, we have provided (section 192) that his evidence, before being used as such, shall be read over to him, and, if he admits it to be correct, signed by him.

We have empowered the Court (section 193), at any stage of the suit, to recall and re-examine a witness who has not departed.

#### CHAPTER XVI.—OF AFFIDAVITS.

This chapter is wholly new. It empowers the Court to order any particular fact to be proved by affidavit: provides that evidence may be given by affidavit on any application or petition: indicates the matters to which affidavits should be confined: and, lastly, specifies the officer by whom the oaths of declarants may be administered.

#### CHAPTER XVII.—OF JUDGMENT AND DECREE.

In accordance with a ruling of the Calcutta High Court, we have authorized (section 199) a Judge to deliver a judgment written by his predecessor but not delivered.

We think that, as a rule, the judgment should be written in the language of the Court, but we have provided (section 200) that if such language be not English or the Judge's mother-tongue, the judgment may be written either in English or his mother-tongue. We think (section 201) that the judgment need not be translated, unless any of the parties so require.

We have provided (section 202) that the judgment shall not be altered or added to, save to correct verbal errors or on review.

We think (section 203) that all judgments (save those of Small Cause Courts) should contain a concise statement of the case, in addition to the matters mentioned in section 183 of Bill No. III.

We have provided (section 205) that the Judge, before signing the decree, shall satisfy himself that it has been drawn up in accordance with the judgment.

We have given power to amend the decree not only when it is at variance with the judgment, but also in case of clerical or arithmetical errors; but in all such cases we have provided (section 206) for notice to the parties or their pleaders.

In money-decrees, we think (section 209) that the interest allowed from the date of the decree should not exceed six per cent. per annum. This, we hope, will abolish the practice of treating such decrees as desirable investments.

We think (section 210) that no application for an order to pay the amount of a decree by instalments should be allowed after six months from the date of the decree, and we have provided for notice to the plaintiff of such applications.

In administering the assets of persons dying after the Code comes into force, we have provided (section 213) that the courts shall be guided by the same rules as to rights of creditors, proveable debts and valuation of annuities, and future and contingent liabilities, as are in force as to the estates of persons adjudged insolvent, and that all persons who would be entitled to dividends out of the estate of any such deceased person, may come in under the decree and make their claims against the estate. We have declared in the same section that applications under section 265 of the Indian Contract Act, to wind up the business of a partnership, shall be deemed to be administration suits.

We think (section 216) that certified copies of the judgment and decree should not be furnished except at the expense of the parties applying for them.

#### CHAPTER XVIII.—OF COSTS.

We have here made no substantial change.



## CHAPTER XIX.—OF THE EXECUTION OF DECREES.

We have distributed the matter of this long and important chapter under eight heads, namely, (a) Courts by which decrees may be executed, (b) application for execution, (c) staying execution, (d) the mode of executing decrees, (e) attachment of property, (f) sale and delivery of property, (g) resistance to execution, and (h) arrest and imprisonment.

*Court by which decrees may be executed.*

For section 330 of Bill No. III, we have substituted a section (223) as to the Court by which a decree may be executed, and prescribing the procedure for sending a decree for execution to a Court other than that which passed it. When the Court passing the decree is subordinate to a District Court, we think it should send the decree to the District Court to which it is subordinate, and that such Court should deal with the decree as if it had been passed by itself.

*Application for execution.*

When a decree has been transferred by assignment, we have provided (section 232) that notice of any application to execute it shall be given to the transferor and the judgment-debtor, and that it shall not be executed until the Court has heard their objections (if any) to such execution.

When the judgment-debtor dies before the decree is fully executed, and application is made to have it executed against his legal representative to the extent of the assets which are in his hands, we have empowered (section 234) the Court to compel the representative to produce his accounts.

We think (section 235) that applications for the execution of decrees should be verified like complaints, and that they should state whether any, and what, previous applications have been made, and with what result.

We have provided (section 236) for the verification of the descriptions of immoveable property sought to be attached.

*The mode of executing decrees.*

In section 244 (= section 329 of Bill No. III) we have omitted the clause as to questions relating to sums alleged to have been paid in discharge or satisfaction of a decree. This will get rid of the ambiguity arising from the provisions of section 206 of Act VIII of 1859 as compared with section 11 of Act XXIII of 1861.

We have directed (section 245) that applications for execution shall be rejected or returned for amendment when the needful particulars or inventories are wanting. Every such amendment will be attested by the Judge's signature. We have provided in the same section that, in executing a decree for money, the value of the property attached shall as nearly as possible correspond with the amount of the decree.

We have omitted as useless the clause as to the execution of a decree for the share of a dwelling-house of an undivided Hindu family.

When a decree against a surety is executed, we have provided (section 253) for giving him previous notice.

We have introduced a section (254 = Order xlii, Rule 8) providing for the execution of a decree against partners in the name of the firm.

We have provided (section 258) that, when moneys payable under a decree are paid out of Court to the decree-holder, he shall certify the payment to the Court whose duty it is to execute the decree. We have omitted the proviso in section 203 of Bill No. III that decrees for the recovery of wives were to be declaratory only. We are informed that, in the Punjab at least, such a rule would have worked unsatisfactorily.

We have provided (section 260) for the enforcement of injunctions, and declared in the same section that no attachment issued to enforce an injunction, or a decree for specific performance, shall remain in force for more than a year.

*Attachment of Property.*

We have exempted (section 266) from attachment and sale in execution of a decree the following articles:—the necessary wearing apparel of the judgment-debtor's wife and children: the tools of artisans: implements of husbandry: cattle kept *bonâ fide* for agricultural purposes: the materials of houses and other buildings belonging to and occupied by agriculturists: political pensions: the salaries of servants of Railway Companies: the pay and allowances of persons to whom the Native Articles of War apply: the wages of labourers and domestic servants.

We think that general attachments of the moveable property of judgment-debtors should no longer be permitted, and we have accordingly struck out the clauses (210, 235, 236, and part of 231) of Bill No. III relating to this subject. Ample power to obtain discovery as to such property is given by section 267.

We have provided (section 268) that no attachment to enforce a decree for a specific moveable shall remain in force for more than six months, at the end of which time, if the judgment-debtor has not obeyed the decree, the property attached may be sold, and out of the proceeds the Court may award the decree-holder such compensation as it thinks fit, and pay the balance to the judgment-debtor.

We have empowered (section 269) the Local Government to make rules for the maintenance and custody of livestock and other moveable property while under attachment, and directed the attaching officer to act in accordance with such rules.

We have provided rules (section 271) for the attachment of moveable property in rooms actually occupied by native women.

We have introduced a section (273) dealing with the attachment of decrees.

We have provided (section 275) for withdrawing an attachment when the decree under which it has been made is set aside or reversed.

We have struck out the section (307 of Bill No. III=section 272 of Act VIII of 1859) empowering the Court to order the proceeds of property attached under a decree obtained fraudulently to be paid in satisfaction of another decree. The power is rarely used, and the case contemplated is, we think, one for a regular suit, not a summary proceeding.

*Sale and delivery of Property.*

We think (section 288) that the proclamation of execution sales should state the incumbrances (if any) to which the interest about to be sold is liable, and we have provided that no Judge, &c., shall be answerable for error in the proclamation unless it has been committed dishonestly.

We have struck out the clause (section 280 of Bill No. III) allowing process for attachment and sale of moveables to be issued either successively or simultaneously.

We have provided (section 291) for adjournments of execution-sales, and for stopping them on tender of the debt and costs, or on proof that the amount has been paid into the Court which ordered the sale.

We have forbidden (section 292) all officers conducting or otherwise concerned in sales to bid for or purchase the property sold.

In lieu of providing that the attaching creditor shall be first paid out of the assets realized, and that the surplus shall be distributed amongst the other execution-creditors, we have declared (section 295) that such assets shall (after deducting the costs) be divided rateably among all persons who have, prior to the realization, applied for execution of money-decrees against the judgment-debtor and have not obtained satisfaction. We have also provided that when any property liable to be sold in execution is subject to a mortgage, the Court may, with the assent of the mortgagee, order that the property be sold free from the mortgage, giving to the mortgagee the same right against the proceeds as he had against the property sold.

Courts inferior to District Courts should not, in our opinion (section 303), have power to sell immoveable property in execution of a decree; but when any such inferior Court thinks that such a sale should be made, we have provided (section 304) that such Court shall refer the case to the District Court to which it is subordinate, and declared that the District Court may then sell as if the decree had been made by itself.

We have amended the section (309) empowering the co-sharer in an undivided estate to claim at sale price a share of such estate sold in execution. If the claim be made before sunset on the day of sale, and the claimant then repay to the purchaser the amount of his deposit, the claimant will be substituted for the auction-purchaser.

We have fixed (section 312) sixty days as the time within which the purchaser of immoveable property may apply to set aside the sale on the ground that the judgment-debtor had no legally saleable interest therein.

We have, by section 316, provided (in accordance with Act XI of 1859, section 28, and Schedule A) that the purchase shall be deemed to take effect from the date of the attachment.

As to sales of land by Collectors, we have substituted for section 276 of Bill No. III a clause (320) providing that the Local Government may transfer to the Collector of any District the execution of decrees in cases in which a Court has ordered any interest in immoveable property to be sold. And we think (section 321) that whenever the execution of a decree has been so transferred, the Collector, if he thinks that the debts of the judgment-debtor can be discharged without a sale of the whole of the property, should, notwithstanding the order, have power to sell only part, or to mortgage the whole or any part, of the land, or to let or manage it himself for a term not exceeding twenty years from the date of the order. Where the Collector lets or manages, we have provided (sections 322, 323) for giving notice to the judgment-creditors to come in; for excluding all other claimants from any right to payment out of the proceeds; for preventing the debtor from incumbering during the term the property so let or managed; and, if at the end of the term the requisite amount has not been raised, for selling such property. Where the Collector sells or exercises the power to mortgage, let, or manage, we have required him (section 324) to inform the Court which made the order of sale, to render accounts to such Court, and to hold the balance in his hands at its disposal.

Where the sale of immoveable property has been postponed to enable the judgment-debtor to raise the amount of the decree, and the Court authorizes him to sell, mortgage or let the property, we have provided (section 324) that all moneys payable under such sale, mortgage or lease shall be paid into Court and not to the judgment-debtor.



We have omitted (section 325) as unnecessary the power to order security to be taken from the defendant when the Court authorizes the Collector to stay the public sale of land. We have expressly empowered the Local Government (section 326) to make special rules for any territory prohibiting the sale of any class of interests in land in execution of money-decrees.

*Arrest and Imprisonment.*

We have provided (section 335) that a judgment-debtor may be arrested in execution at any hour and on any day, and that he shall thereupon be brought before the Court, except when the decree is for money and the judgment-debtor pays the amount of the decree and the costs of the arrest. When he is brought before the Court, we have directed the Judge to inform him that he may obtain relief under Chapter XX, and if he express his intention so to apply, and if he furnish security for his appearance at any time when called upon, the Court will release him.

When the judgment-debtor fails to pay the amount of principal and interest, we have directed (section 337) the serving-officer to bring him before the Court, and when the serving-officer cannot execute the warrant, we think (section 343) that the Court should examine him on oath as to his inability.

We think (section 339) that no judgment-debtor should be arrested unless and until the decree-holder pays into Court a proper sum for the subsistence of the judgment-debtor from his arrest until he is brought before the Court. We have empowered the Local Government to fix scales of monthly allowance for the subsistence of judgment-debtors in prison.

As to imprisonment in execution of a decree, we have provided (section 341) that a judgment-debtor may be discharged from jail without the order of the Court when the term of his imprisonment is completed; and we think (section 342) that no person should be imprisoned for a longer period than six months, or when the decree is for the payment of a sum not more than Rs. 50, for a longer period than six weeks.

CHAPTER XX.—INSOLVENT JUDGMENT-DEBTORS.

We have here made numerous small amendments, the chief of which are the following:—As to fraudulent transfers, we think (section 351) that the Court need only see that they were not made within two months next before the date of the decree in execution of which the insolvent was arrested or imprisoned. We have provided (section 352) that all creditors, whether mentioned or not in the debtor's application, shall prove their debts. We have provided (section 355) that the receiver of the insolvent's property shall give security, and (section 356) that he may retain as remuneration five per cent. upon the amount of the balance distributed to the creditors. And we have reduced (section 359) from two years to one year the term for which a fraudulent insolvent may be imprisoned.

CHAPTER XXI.—OF THE DEATH, MARRIAGE, AND INSOLVENCY OF PARTIES.

We have added two illustrations to the section (361) as to non-abatement by death where the cause of action survives.

We have provided a limitation (sections 364, 366) for applications under this chapter.

When a suit abates or is dismissed under this chapter, we have permitted (section 371) the person claiming to be the plaintiff's representative to apply to set aside the order of abatement or dismissal.

We have provided (section 372) for cases of assignment pending the suit.

CHAPTER XXII.—OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

We have provided here (section 373) for the case of abandonment of part of the plaintiff's claim, and (section 375) for the finality of decrees passed in accordance with compromises. We have made no other substantial change.

CHAPTER XXIII.—OF PAYMENT INTO COURT.

We have given the Court (section 376) a discretionary power with regard to the payment of deposits in Court to the plaintiff.

Where the Court decides that the defendant's deposit was a full satisfaction of the plaintiff's claim, we have provided (section 379) that the plaintiff shall pay, not the costs of the suit, but the costs incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

CHAPTER XXIV.—OF REQUIRING SECURITY FOR COSTS.

We think that the plaintiff should not be required to furnish security for costs unless a defendant so require. We have altered this chapter (section 380) accordingly.

CHAPTER XXV.—OF COMMISSIONS.

When a Court inferior to a District Court issues a commission to examine a person residing within its jurisdiction, we have provided (section 385) that the selection of the person to execute the commission shall be subject to such rules as the District Court may prescribe.

We have provided (section 386) that any District Court and Court of Small Causes may issue commissions for the examination of officers of Government who cannot attend the Court without detriment to the public service, and of persons who are about to leave the jurisdiction before the date on which the suit in which their evidence is required is set down for hearing.

No Court inferior to a District Court, other than a Court of Small Causes, should, we think, issue commissions for the examination of persons resident beyond its jurisdiction. We have made a provision to this effect in section 386.

We have declared (section 391) that the provisions contained in this chapter as to the execution and return of commissions shall apply to commissions issued by Foreign Courts. We have struck out the section (385 of the Bill No. III) as to taking the evidence of prisoners. The matter is sufficiently provided for by the Prisoners' Testimony Act.

We have extended to proceedings as well as to suits the sections (392, 395) as to commissions for local investigations, and to examine accounts. In the case of the former class of commissions, when the Local Government has made rules as to the persons to be appointed commissioners, we have required the Court to comply with such rules.

#### CHAPTER XXVI.—SUITS BY PAUPERS.

We have added (section 402) libel to the list of civil injuries in respect of which a pauper should not be allowed to sue as such.

We think (section 407) that a pauper suing on the original side of the High Court should show that he does not possess property worth Rs. 100 except his wearing apparel and the subject-matter of the suit; and as to fraudulent disposals of property by a pauper, we have provided that the Court need only consider whether such disposal was effected within the two months next before the presentation of the pauper's petition.

We have struck out the sections (406, 407 of Bill No. III) authorizing parties to obtain summonses to witnesses and empowering the Court to make local investigations.

We have provided (section 411) that the Court fees, which would have been payable by the plaintiff, if he had not been allowed to sue as a pauper, shall be a first charge on the subject-matter, if any recovered by him.

We think (section 414) the plaintiff should be dispaupered if he has entered into any agreement under which any other person has obtained an interest in the subject-matter of the suit.

#### CHAPTER XXVII.—SUITS BY OR AGAINST GOVERNMENT AND PUBLIC OFFICERS.

We think (section 416) that suits against Government and against public officers for acts done in their official capacity should not be instituted in any Court inferior to a District Court (a similar provision is made by the Bombay Civil Courts Act XIV of 1869, section 32); but we have provided that any such suit may be transferred to a subordinate Court.

We think (section 420) that in suits against a public officer, as well as in those against Government, the summons should be served on the Government Pleader, or on some person appointed to receive process in behalf of Government.

We have provided (section 424) that no suit shall be brought against Government or against a public officer as such until two months next after delivery of a notice in writing, stating the cause of action and the name and residence of the intending plaintiff. We have also provided that every suit against a public officer must be commenced within six months next after the accrual of the cause of action. Similar provisions are contained in the Police Act (V of 1861), section 42, and in various Municipal Acts.

#### CHAPTER XXVIII.—SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

We have laid down rules (section 430) as to when aliens may sue in the Courts of British India. We have declared (section 431) that a Foreign State may sue in our Courts, provided that it has been recognized by the Governor-General in Council, and that the object of the suit is to enforce the private rights of the head or of the subjects of the Foreign State. We have also declared in the same section that the Courts shall take judicial notice of the fact that a Foreign State has not been recognized by our Government. We have barred suits (section 433) against Sovereign Princes, ruling Chiefs, ambassadors, and envoys, except with the consent of Government, and declared that such consent shall not be given except in certain cases. We have exempted their person from arrest under the Code, and we have declared that no decree shall be executed against their property unless with the permission in writing of a Secretary to Government. We have provided (section 434) for the execution in British India of the decrees of the Courts of Native States in alliance with Her Majesty.

#### CHAPTER XXIX.—SUITS BY AND AGAINST CORPORATIONS AND COMPANIES,

and

#### CHAPTER XXX.—SUITS BY AND AGAINST TRUSTEES, EXECUTORS, AND ADMINISTRATORS.

We have made no change in either of the above chapters.



#### CHAPTER XXXI.—SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

We have provided (section 442) that notice of application to take off the file complaints filed by or on behalf of minors without next friends, shall be given to the person presenting the complaint. We have altered section 445 (=section 439 of Bill No. III), so as to enable married women to act as next friends. We have required (section 443) the Court in every case, on being satisfied of a defendant's minority, to appoint a guardian *ad litem*, and have consequently omitted the sections (453 and 454 of Bill No. III) as to the assignment of a guardian at the instance of the plaintiff. We have taken the opportunity of declaring (section 443), contrary to the recent decision of Pontifex J., that a guardian *ad litem* is not a guardian of person or property within the meaning of the Indian Majority Act, 1875. We have struck out as unsuited to the Mofassal the rule requiring an order to change a minor's pleader, and the rule against not giving a day to show cause, when a decree is made against a minor defendant, and as to making payment to the receiver of money, &c., decreed to a minor. We have omitted from section 463 the provision as to the nature of the evidence contained in the corresponding section (462) of Bill No. III. We have exempted (section 464) from several sections of this chapter minors under the jurisdiction of the Court of Wards, and minors for whose persons or property guardians or managers have been appointed by the Civil Courts under any local law.

#### CHAPTER XXXII.—SUITS BY AND AGAINST MILITARY MEN.

We have here provided (section 463) for the case here the soldier concerned is serving in military staff employment.

#### CHAPTER XXXIII.—INTERPLEADER.

We have here merely amended the drafting of two of the sections.

#### CHAPTER XXXIV.—OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

We have expressly stated (section 477) that the suits in which plaintiffs may apply that security be taken for the defendant's appearance, are suits other than suits for the possession of immoveable property. Where the defendant is imprisoned for failing to give security, we think (section 481) that the maximum term of imprisonment should be six months.

We have provided (section 482) that subsistence allowance shall be paid into Court in the case of every arrest under this chapter.

We have provided (section 488) for removing the attachment when the suit is dismissed. Where property is attached under this chapter, and a decree is given in favour of the plaintiff, we have declared (section 490) that it shall not be necessary to re-attach the property in execution of the decree.

We have struck out the section (492 of Bill No. III) empowering the Court to stay the sale of property already under attachment, when execution of a decree fraudulently obtained is applied for. The reasons for omitting section 308 of that Bill are equally applicable to section 492.

#### CHAPTER XXXV.—OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

We have empowered (section 492) the Court to grant an injunction to stay a wrongful sale in execution of a decree. We have been informed that the corresponding clause of Act VIII of 1859 (section 92, first sentence,) has been held not to apply to such a case.

We have provided (section 493) that the imprisonment by which injunctions granted under this chapter may be enforced shall not exceed six months.

We have added sections (498, 499, 500) empowering the Court to order the interim sale of perishable articles: the detention, preservation, or inspection of any property forming the subject of the suit: and, for the purposes aforesaid, the entry on or into any land or building in the possession of any party to the suit, the taking of samples, making of observations and trial of experiments. They correspond with the English Order 32, rules 2, 3 and 4.

#### CHAPTER XXXVI.—APPOINTMENT OF RECEIVERS AND MANAGERS.

We have here expressly provided (section 503) that Receivers and Managers shall pass their accounts, pay the balance due thereon, and be responsible for loss occasioned by their wilful default or gross negligence. We think (section 505) that the powers conferred by this chapter should be exercised only by High Courts and District Courts.

#### CHAPTER XXXVII.—REFERENCE TO ARBITRATION.

Where an umpire is appointed, we have required (section 509) the Court to fix a reasonable time for the delivery of his award.

We have provided (section 514) for superseding the arbitration where, owing to the fault of the parties, the arbitrator cannot complete his award within the specified period.

We have provided (section 522) that decrees following judgments according to awards shall be final.

When the arbitrator is not named in an agreement to refer, and the parties cannot agree as to the nomination, we have empowered (section 523) the Court to nominate him.

## CHAPTER XXXVIII.—OF PROCEEDINGS ON AGREEMENT OF PARTIES.

We have here merely added a direction (section 527) that cases stated under this chapter shall be divided into consecutively numbered paragraphs, and concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby.

## CHAPTER XXXIX.—OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

This chapter corresponds with 18 & 19 Vic., c. 67, and Act V of 1866, sections 2 to 8. We have here declared (in accordance with decisions of Bramwell, B., and Phear J.) that the defendant shall not be required to pay into Court the sum mentioned in the summons, unless the Court thinks his defence not to be *prima facie* sustainable or feels reasonable doubt as to its good faith. And we have taken the opportunity of declaring (contrary to the decision of the latter Judge) that the clause corresponding with Act V of 1866, section 2, is not confined to cases in which the bill sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

Act V of 1866 is now in force in the Charter High Courts, the Chief Court of the Punjab, the Rangoon Recorder's Court, and the Small Cause Court of Madras. We propose (section 538) to extend the corresponding chapter of the Code also to the Small Cause Courts of Calcutta and Bombay, and to the Court of the Judge of Karachi.

We have omitted chapter XLI of Bill No. III (Bar of Appeals not expressly permitted) as unnecessary. No appeal can lie unless it is allowed by the Code or some other law for the time being in force.

## CHAPTER XL.—OF APPEALS FROM ORIGINAL DECREES.

We have struck out the clause requiring appeals to the High Court to be heard by two or more Judges. It would limit the discretion expressly conferred by Act of Parliament and Royal Charter.

We have provided (section 540) that the memorandum of appeal shall be presented by the appellant or his pleader, and shall be accompanied by a copy not only of the decree, but also of the judgment on which the decree is founded.

We have struck out, as likely to work unsatisfactorily, the provisions contained in sections 548—553 of Bill No. III, which authorize the appellant merely to state generally his dissatisfaction with the decree appealed against and to file his grounds of objection separately.

Where a memorandum of appeal is amended, we have required (section 543) the Judge to attest the amendment.

We have empowered (section 550) the appellate Court, after hearing the appellant, if he appears, to confirm the decision appealed against without sending notice of the appeal to the lower Court or serving such notice on the respondent. A similar rule exists in the Punjab (Act IX of 1873, section 7), and has been found to work well.

We have laid down rules (section 556) as to the right to begin (a) where the appeal is from the whole decree, (b) where there are cross-appeals, and (c) where the appeal is from only a portion of the decree and there is no cross-appeal.

We have provided (section 560) a period of limitation for applications to re-hear, where judgment has been given *ex parte* against the respondent.

Where a case is remanded with direction to take specified evidence, we have authorized (section 563) the Court to receive evidence tendered to contradict evidence so taken.

We have redrawn the section (575—section 589 of Bill No. III) as to decisions of appeals heard by Benches of two or more Judges who differ. When there is no majority on the Appellate Bench which concurs in reversing or varying the decree appealed against, we think that decree should stand.

We have omitted as useless the provision as to sealing the decree in appeal.

## CHAPTER XLI.—OF APPEALS FROM APPELLATE DECREES.

We have struck out the clause requiring the pleader presenting an appeal to certify that the grounds are reasonable, and forbidding him to give such certificate unless he has been authorized by the High Court. We have also omitted the clause declaring that an application for a second appeal shall be argued only by the pleader signing such certificate.

## CHAPTER XLII.—OF APPEALS FROM ORDERS.

We have declared (section 588) that an appeal shall lie from orders determining whether immoveable property is or is not within the local limits, from orders striking out or adding the names of persons as plaintiffs or defendants, from orders under sections 44 adding a cause of action, from orders under section 47 excluding a cause of action, from orders under section 234 as to questions relating to the execution of decrees, from orders under section 176 where a party refuses to give evidence called for by the Court, from orders rejecting applications under section 371, from orders disallowing objections under section 373, and from orders under section 518 modifying an award.

Appeals from orders in insolvency will in all cases lie (section 589) directly to the High Court.

## CHAPTER XLIII.—OF PAUPER APPEALS.

Except some trifling omissions, we have made no change in this chapter.



## CHAPTER XLIV.—OF APPEALS TO THE QUEEN IN COUNCIL.

We have here provided (section 610) for estimating in Indian currency sums expressed on orders of Her Majesty in Council to be payable in British currency, and we have authorized (section 613) the High Courts to make rules as to the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council.

## CHAPTER XLV.—OF REFERENCE TO THE HIGH COURT.

We have extended (section 617) this chapter to questions arising before or in the hearing of a suit and in the execution of a decree. We have struck out the clause providing that references shall be heard by not less than two Judges of the High Court. We have provided (section 621) that when a case is referred, the High Court may alter, cancel, or set aside any decree which the Court making the reference may have passed in the suit. We have omitted as useless the section requiring the High Court to fix an early day for hearing references. Our other changes here are merely verbal.

## CHAPTER XLVI.—OF REVIEW OF JUDGMENT.

We think (section 622) that powers similar to those given by this chapter to High Courts may usefully be given to District Courts as to cases decided by subordinate Courts, including Courts of Small Causes.

We have struck out the clause empowering an appellant to abandon his appeal and apply for a review. We have extended the clause (624) forbidding (except in certain cases) applications for review of judgments to be made to Judges other than those who delivered them, to cases in which a clerical error has been discovered on the face of the decree. Where the business of the Court whose judgment is sought to be reviewed has been transferred to another Court, we have authorized (section 626) the application to be made to the latter Court. But we think (section 624) that, except on the discovery of some new and important matter or evidence, or of some clerical error apparent on the face of the decree, no application for the review of a judgment should be made to any Judge other than the Judge who delivered it. Where a review is granted, we have required (section 626) the Judge to record with his own hand his reasons for so doing.

We have omitted the clauses forbidding subordinate Courts to grant reviews without permission of the higher Court.

We think (section 629) that the order granting a review or rejecting an application for a review should be final except where the review has been granted without jurisdiction. Where the application has been rejected in consequence of the failure of the parties to appear, we have provided for restoring in proper cases the application to the file. We have also expressly forbidden the Courts to entertain applications to review orders passed on review or on applications for review.

## CHAPTER XLVII.—SPECIAL RULES RELATING TO THE HIGH COURTS.

We have here omitted the following sections of Bill No. III for the reasons respectively appended thereto—

- 665 (as to the extraordinary original jurisdiction of the High Court): provided for by the Charters,
- 666 (power to High Court to provide for the exercise of its jurisdiction): ditto,
- 668 (decision when Judge differ): provided for in the prior part of the Bill,
- 670 (declaring that acts required to be done by a pleader may be done by an attorney): ditto,
- 672, 673 (power to refer matters for investigation in chambers): provided for by the Charters,
- 37, 674 (signature of the Registrar): provided for by the former part of the Bill,
- 675 (language): unnecessary,
- 676 (assessors): ditto,
- 677 (interlocutory orders): ditto,
- 678 (appearance of vakils on the original side): can be provided for under the Charters,
- 681 (obtaining summonses from Registrar): unnecessary,
- 684 (procedure in testamentary and intestate cases): provided for by rule.

We have empowered the High Court to declare by rule what shall be deemed to be "acts not of a judicial nature," which may be done by the Registrar.

We have declared (section 640) that the following portions of the Code shall not apply to the High Court in the exercise of its ordinary and extraordinary original civil jurisdictions, viz. :—

- 37, recognized agents;
- 54, clause (a), rejection of plaint where relief sought is under-valued;
- 160, payment into Court of expenses of witnesses;
- 206, contents of decree;

263, decree for execution of conveyances or endorsement of negotiable instruments. We have expressly empowered (section 641) the High Court to prescribe forms for its own use.

## CHAPTER XLVIII.—MISCELLANEOUS.

We have struck out as now unnecessary the clause (section 686 of Bill No. III) declaring that where the highest Civil Court of appeal consists of a single Judge, he shall have the powers which were (but are not now) vested by this Code in two or more Judges.

We have amended (section 643) the rules as to the names of persons exempt from appearance in Court. We have omitted the following sections of Bill No. III:—

- 687, 688, as to assessors (obsolete and useless),
- 697, as to verifying false complaints (provided for by the Penal Code),
- 705, as to ministerial officers (can be provided for executively),
- 708, as to deposits in lieu of bail (useless).

We have also struck out the clause empowering the Government of India to invest a Chief Commissioner with the powers of a Local Government under the Code. This matter is sufficiently provided for by Act XXXII of 1867.

We have redrawn the section (644) relating to exemption from arrest. It now provides that no judicial officer shall be liable to arrest under the Code while going to, presiding in, or returning from, his Court, and that the parties to a suit and their pleaders, recognized agents and witnesses shall be similarly exempt while going to, or attending a Civil Court for the purpose of such suit, and while returning from such Court.

We have struck out the section (698 of Bill No. III) as to certain offences in Court not relating to documents. The matter seems sufficiently provided for by the Code of Criminal Procedure.

We have introduced a section (648 = Act XI of 1865, section 42) enabling registrars of Mufassal Courts of Small Causes to state cases for the opinion of the Judge.

We have provided (section 650) for attaching property situate outside the local limits of the jurisdiction of the Court making the order of attachment.

We have provided (section 653) a punishment for escape from civil custody.

We have empowered (section 654) the High Court to make rules to regulate any matter connected with the procedure of the Courts of Civil Judicature.

## SCHEDULE I.—REPEALS.

We have added to this schedule the Lord's Day, Act 29, Car. II, c. 7: sections 8, 9, 10, 11, the second clause of section 19, sections 22 to 28 (inclusive), 42, and part of 32 of the Mufassal Small Cause Courts Act XI of 1865, parts of Acts XIV and XIX of 1865, and the unrepealed part of Act XXIV of 1866, the whole of Act X of 1867, and so much of sections 15 and 16 of Act XV of 1869 as relates to process issued by a Civil Court. We have also added Act IX of 1873, sections 7, 9, and 10, and Madras Regulation XIV of 1816, section 27.

## SCHEDULE II.—SECTIONS EXTENDING TO MUFASSAL COURTS OF SMALL CAUSES.

We have made a few changes in this schedule, the most important of which is the addition of the chapters on interpleader and on reference to the High Court.

## SCHEDULE IV.—FORMS.

We have added a few forms—concise statements of claim: statements of defence: temporary injunctions; and we have amended some of the forms of decrees.

We have also made numerous small changes in the wording and arrangement of the Bill, and we think that it has been so altered that it should be republished with this report in the *Gazette of India* and the local Gazettes, and that its further consideration should be stayed till the Council re-assembles in Calcutta.

We desire, in conclusion, to express our acknowledgments of the learning, acuteness, and industry evinced by many of the communications respecting the Bill. We would in particular mention those by Mr. Pitt Kennedy, the Standing Counsel; Mr. Belchambers, the Registrar of the High Court at Fort William; Mr. Plowden, the Government Advocate, Punjab; Mr. Nelson, of the Madras Civil Service; Messrs. Field, Maclean, Crosthwaite, and J. W. Smyth, all of the Bengal Civil Service; and Hukm Chand, Extra Assistant Commissioner, Montgomery.

A. HOBHOUSE.

E. C. BAYLEY.

J. INGLIS.

F. R. COCKERELL.

T. C. HOPE.

SIMLA,

The 13th September 1876.



## No. IV. THE CODE OF CIVIL PROCEDURE.

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THE SECOND SCHEDULE.—Chapters and sections extending to Mufassal Courts of Small Causes.

THE THIRD SCHEDULE.—Bombay enactments.

THE FOURTH SCHEDULE.—Forms.

*A Bill to consolidate and amend the Laws relating to the Procedure of the Courts of Civil Judicature.*

Whereas it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:—

## PRELIMINARY.

Short title. 1. This Act may be cited as "The Code of Civil Procedure:" and it shall come into force on the day of 1876.

Commencement. This section and section 3 extend to the whole of British India. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV of 1874.

Local extent. 2. In this Act, unless there be something repugnant in the subject or context—

Interpretation-clause. "chapter" means a chapter of this Code:

"district" means the local limits of the jurisdiction of a principal civil Court of original jurisdiction (hereinafter called a

'District Court'), and includes the local limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court.

"jail" means the civil jail of the district, or any place appointed by the Local Government for the confinement of persons under civil process:

"pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court:

"Collector" means every officer performing the duties of a Collector of land revenue:

"the cause of action" means the whole of the circumstances which a plaintiff must allege in order to show a right to sue, and

"a part of the cause of action" means some one of those circumstances:

"judgment" means the statement given by the Judge as the grounds of the order or decision by which a suit or appeal is determined:

"decree" means the formal order of the Court in which the result of the decision of the suit or appeal is embodied. An order on appeal, remanding a suit for re-trial, is not within this definition:

"Judge." "Judge" means the presiding officer of a Court:

"judgment-debtor" means any person against whom a decree or order has been made:

"decree-holder" means any person in whose favour a decree has been made, and includes any person to whom such decree is transferred:

"affidavit" means a declaration in writing sanctioned by the oath of the declarant administered by a Court or person duly authorized for that purpose:

"written" includes printed and lithographed, and "writing" includes print and lithography:

"foreign Court" means a Court situate beyond the limits of British India and not having authority in British India nor established by the Governor-General in Council:

"foreign judgment" means the judgment of a foreign Court:

"public officer" means a person falling under any of the following descriptions (namely):—

Every Judge;

Every covenanted servant of Her Majesty;

Every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and

every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column of the same schedule.

But when in any Act, Regulation or Notification passed or issued prior to the day on which this Code comes into force, reference is made to Act VIII of 1859, Act XXIII of 1861, or the 'Code of Civil Procedure,' or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof;

4. Save as provided in section 3, nothing herein contained shall be deemed to affect the following enactments (namely):—

The Central Provinces Courts Act, 1865 :  
The Punjab Courts Act, 1865 :  
Act No. XXVII of 1867 :  
The Oudh Civil Courts Act, 1871 :  
The Punjab Appeals Act, 1873 :  
The Burmah Courts Act, 1875 :

or any local law prescribing a special procedure for suits between landlord and tenant.

5. The chapters and sections specified in the second schedule hereto annexed, extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865. The other chapters and sections do not extend to such Courts. But nothing herein contained shall be deemed to enlarge the powers which such Courts now possess for the purposes of effecting attachments or executing decrees.

6. Nothing in this Code affects the jurisdiction or procedure—

(a) of Military Courts of Request;

(b) of a single officer duly appointed in the Presidency of Bombay to try small suits in military bazars at Cantonments and Stations occupied by the troops of that Presidency; or

(c) of Village Munsifs or Village Panchayats under the provisions of the Madras Code.

7. With respect to—

(a) the jurisdiction exercised by certain jagirdars and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act XV of 1840 in the cases therein mentioned; and

(b) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the appeals to the civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

8. Save as provided in sections 25, 86, 225 and Chapter XXXIX, this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code or any part thereof, except so far as relates to appeals and reviews of judgment.

Division of Code.

9. This Code is divided into ten Parts as follows:—  
The first Part: Suits in General.  
The second Part: Incidental Proceedings.  
The third Part: Suits in Particular Cases.  
The fourth Part: Provisional Remedies.  
The fifth Part: Special Proceedings.  
The sixth Part: Appeals.  
The seventh Part: References to the High Court.  
The eighth Part: Review of Judgment.  
The ninth Part: Special Rules relating to the High Court.  
The tenth Part: Certain Miscellaneous Matters.

## PART I.

### OF SUITS IN GENERAL.

#### CHAPTER I.

##### OF THE JURISDICTION OF THE COURTS AND RES JUDICATA.

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force.

12. Except where a suit has been stayed under section 19, the Court shall not try any suit in which the matter in issue is also substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India, or in any Court beyond the limits of British India established by the Governor-General in Council, or before Her Majesty in Council.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in



British India from trying a suit founded on the same cause of action.

13. No Court shall take cognizance of any suit, nor shall it try any issue, in which the matter substantially in issue has been heard and finally decided by a Court of competent jurisdiction, in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title.

*Explanation I.*—The matter above referred to must in the former suit have been alleged by one party and either denied or confessed, expressly or impliedly, by the other.

*Explanation II.*—Any matter which might and ought to have been made ground of defence in a former suit brought by the defendant against the plaintiff, shall be deemed to have been a matter substantially in issue in such suit.

*Explanation III.*—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

No foreign judgment shall operate as a bar to a suit in British India—

(a) if it has not been given on the merits of the case:

(b) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:

(c) if it is in the opinion of the Court before which it is produced contrary to natural justice:

(d) if it has been obtained by fraud:

(e) if it sustains a claim founded on a breach of any law in force in British India.

*Explanation IV.*—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

## CHAPTER II.

### OF THE PLACE OF SUING.

14. Every suit shall be instituted in the Court of the lowest grade competent to try it.

*Suits to be instituted where subject-matter situate.*

15. Subject to the pecuniary or other limitations prescribed by any law, suits

- (a) for the recovery of immoveable property,
  - (b) for the partition of immoveable property,
  - (c) for the foreclosure or redemption of a mortgage of immoveable property,
  - (d) for the determination of any other right to or interest to or in immoveable property,
  - (e) for compensation for wrong to immoveable property,
  - (f) for the recovery of moveable property distrained or attached,
- shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that suits to obtain relief respecting immoveable property held by or on behalf of the defendant may, when the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually or voluntarily resides, or carries on business, or personally works for gain.

*Explanation.*—In this section 'property' means property situate in British India.

16. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

(a) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or

(b) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain as aforesaid acquiesce in such institution; or

(c) the cause of action arises; or

(d) a part of the cause of action arises.

*Explanation I.*—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

*Explanation II.*—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

### Illustrations.

(a.) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East India Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause of action has arisen, or in Delhi, where B carries on business.

(b.) A resides at Simla, B at Calcutta, and C at Delhi; A, B, and C being together at Benares, B and C make a joint promissory note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

(c.) A draws in Simla a bill on B, who accepts the bill in Calcutta and returns it by post to A. The bill does not mention any place of payment. It is presented to B in Calcutta, and he fails to pay. One part of the cause of action has arisen at Simla and others in Calcutta. The suit may therefore be brought either in Simla or in Calcutta.

(d.) A signs a contract in Calcutta for the delivery of rice to B at Delhi and delivers it accordingly. B does not pay the price, and A sues him for it. One part of the cause of action has arisen in Calcutta and another in Delhi. The suit may therefore be brought either in Calcutta or in Delhi.

(e.) A lets a house in Howrah to B, at a monthly rent payable in Howrah. A dies intestate. C obtains in Calcutta a grant of letters of administration to A's estate. B allows the rent to fall into arrear. One part of the cause of action has arisen in Calcutta and another in Howrah, and C may therefore sue B for the arrears either in Calcutta or in Howrah.

17. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court, and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.

*Forum in suits for compensation for wrongs.*

*Illustrations.*

(a.) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(b.) A residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

(c.) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

18. If the suit be for immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

*Suits for immoveable property situate in single districts, but within jurisdictions of different Courts.*

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

*Suits for immoveable property situate in different districts.*

19. If a suit which may be instituted in more than one Court is instituted in a Court within the local limits of whose jurisdiction only part of the cause of action arose, and where the defendant, or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

*Power to stay proceedings where the whole cause of action did not arise and all defendants do not reside within jurisdiction.*

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

*Application when to be made.*

20. Where the Court, under section 19, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee: provided that the proper fee has been levied on the

*Remission of Court-fee where suit instituted in another Court.*

institution of the suit in the former Court, and that the plaint has been returned by such Court.

The interval between the institution of the suit and the date of so staying proceedings and the time requisite for proceeding from the Court in which proceedings are stayed to the Court in which the suit is re-instituted, shall be excluded in computing the period of limitation prescribed for such suit.

*Computation of period of limitation for such suits.*

21. Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the appellate Court, after hearing the other parties if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

*Procedure where Courts in which suit may be instituted are subordinate to the same appellate Court.*

22. Where such Courts are subordinate to different appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

*Procedure where they are not so subordinate.*

23. Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

*Procedure where they are subordinate to different High Courts.*

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate,

and such High Court shall, after considering the objections, if any, of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

24. If, in a suit for immoveable property, the defendant object to the hearing of a suit on the ground that no part of the property is situate within the local limits of the jurisdiction of the Court in which the suit is instituted, or to which it has been transferred, the Court may by order determine the point;

*Suit for immoveable property alleged to be within another local jurisdiction.*

and if the Court find that the property or any part thereof is situate within such limits, it shall proceed to try the suit.

25. The High Court or the District Court may either of its own motion or on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, with-

*Transfer of suits.*



draw any suit instituted in any Court subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

For the purposes of this section the Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

### CHAPTER III.

#### OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

**26.** All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

**27.** Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, if satisfied that the suit has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as may seem just.

**28.** All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

**29.** The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundis and promissory notes.

**30.** Where there are numerous parties having the same interest in one suit, one or more of such parties may sue or be sued, or may be authorized by the Court to defend in such suit, on behalf or for the benefit of all parties so interested.

**31.** No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in contro-

versy so far as regards the rights and interests of the parties actually before it.

**32.** The Court may, at any time before the issues are settled, either upon Court may dismiss or add parties. or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out; and that the name of any party, whether plaintiff or defendant, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No persons shall be added as a plaintiff, or as the next friend of a plaintiff without his own consent thereto.

All parties whose names are so added as defendants shall be served with a summons in manner herein-after mentioned, and the proceedings as against them shall be deemed to have begun only on the service of such summons.

**33.** Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

**34.** All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the issues are settled; and any such objection not taken before the issues are settled shall be deemed to have been waived by the defendant.

**35.** When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any proceeding under this Code: and in like manner when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead, or act for such other in any such proceeding.

The authority shall be in writing, signed by the party giving it, and shall be filed in Court.

#### Recognized Agents, and Pleadors.

**36.** Any appearance, application, or act in or to any Court, required or authorized by law to be made or done by a party to a suit in such Court, may, except when otherwise expressly provided by this Code, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

Provided that any such appearance shall be made by the party in person if the Court so direct.

37. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

(a.) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties.

(b.) mukhtárs certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs.

(c.) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Punjab, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognized agents of parties by whom such appearances, applications and acts may be made and done shall be such persons as the Local Government may from time to time, by notification in the official Gazette, declare in this behalf.

38. Processes served on the recognized agent of a party to a suit shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

39. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing under the hand of his client and shall be filed in Court.

When so filed, it shall be considered to be in force until revoked with the permission of the Court, by a writing signed by the client and filed in Court, or until the client or the pleader dies, or the decree or final order is drawn up.

No advocate of any High Court established by Royal Charter shall be required to file or present any document empowering him to act.

40. Processes served on the pleader of any party or left at the office or ordinary residence of such pleader, relative to a suit, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit as if the same had

been given to or served on the party in person.

41. Besides the recognized agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

Such appointment may be special or general, and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in Court.

#### CHAPTER IV.

##### OF THE FRAME OF THE SUIT.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

43. Every suit shall include the whole of the claim arising out of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

If a plaintiff omit to sue for, or intentionally relinquish, any portion of his claim, a suit for the portion so omitted or relinquished shall not afterwards be entertained.

44. rule a.—No cause of action shall, unless by order of the Court, be joined with a suit for the recovery of land, except claims in respect of mesne profits or arrears of rent in respect of the premises claimed, and damages for breach of any contract under which the same or any part thereof are or is held.

rule b.—Claims by or against husband and wife may be joined with claims by or against either of them separately.

rule c.—Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

rule d.—Rules b and c shall be subject to the provisions of sections 45, 46, and 47.

45. The plaintiff may unite in the same suit several causes of action, and any plaintiffs having causes of action against the same defendant or defendants, may unite such causes of action in the same suit.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the issues are settled, of its own motion or on the application of the defendant, order separate trials of any such causes of action.



to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are so united, the jurisdiction of the Court to hear the suit shall depend on the amount or value of the aggregate subject-matters.

**46.** Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit, may at any time before the issues are settled apply to the Court for an order confining the suit to such of the causes of action as may be conveniently disposed of in one proceeding.

**47.** If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

## CHAPTER V.

### OF THE INSTITUTION OF SUITS.

**48.** Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

**49.** The plaint must be distinctly written in the language of the Court: provided that if such language is not English, the plaint may (with the permission of the Court and the consent of the defendant) be written in English.

**50.** The plaint must contain the following particulars:—

(a) the name of the Court in which the suit is brought;

(b) the name, description and place of abode of the plaintiff;

(c) the name, description and place of abode of the defendant, so far as they can be ascertained;

(d) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;

(e) a demand of the relief which the plaintiff claims; and

(f) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

If the plaintiff seek the recovery of money, the plaint must state the precise amount, so far as the case admits.

#### Illustration.

A sues for mesne profits:

A sues for the amount which will be found due to him on taking unsettled accounts between him and B.

In each of these cases the plaint need only state approximately the amount sued for.

When the plaintiff sues in a representative character, the plaint should show, not only that he has an actual existing interest in the subject-matter, but that he has taken the steps necessary to enable him to institute a suit concerning it.

#### Illustrations.

(a.) A sues as B's executor. The plaint must state that A has proved B's will.

(b.) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

(c.) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

The plaint must show that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

#### Illustration.

A dies leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must show that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must show the ground upon which exemption from such law is claimed.

**51.** The plaint shall be subscribed by the plaintiff, and his pleader (if any), and shall be verified at the foot by the plaintiff or, with the permission of the Court, by some person acquainted with the facts of the case.

**52.** The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

When the plaint is verified by any person other than the plaintiff, such person shall set forth his knowledge or the grounds of his belief on the subject, and the reason why the verification was not made by the plaintiff.

The verification shall be signed by the person making it in the presence of a witness, who shall also sign it.

The Court may in any case examine such witness as to the fact of the signature, and shall so examine him when the person making the verification does not appear.

**53.** The plaint may, at the discretion of the Court, and at any time before the issues are settled, be rejected, returned for amendment within a time to be fixed by the Court, or amended then and there, upon such terms as to the payment of costs occasioned by the amendment as the Court thinks fit.

(a) if it do not state correctly and without prolixity the several particulars hereinbefore required to be specified therein; or

(b) if it contain any particulars other than those so required; or

(c) if it be not subscribed and verified as hereinbefore required; or

(d) if it do not disclose a cause of action; or

(e) if it is not framed in accordance with section 42.

Provided that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

Attestation of amendment.

When a plaint is amended the amendment shall be attested by the signature of the Judge.

When the plaint shall be rejected.

54. The plaint shall be rejected in the following cases:—

(a.) If the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(b.) If the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(c.) If, in the case mentioned in section 381, the plaintiff fail to furnish security for the payment of the costs that may be incurred by the defendant:

(d.) If the suit appear from the statement in the plaint to be barred by any positive rule of law.

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect, with the reason for such order.

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

57. The plaint shall be returned to be presented to the proper Court in the following cases:—

(a.) If a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law:

(b.) If, in a suit relating to immovable property, but not coming under the proviso to section 15, it appear that no part of such property is situate within the local limits of the Court's jurisdiction:

(c.) If, in any other case, it appear that the cause of action, or a material part thereof, did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits.

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

58. If the Court consider the plaint admissible, it shall cause the plaintiff to endorse thereon, or to annex thereto, a memorandum of the documents (if any) which he has filed along with it; and the plaintiff shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permit him to file a like number of concise statements of the nature of the claim made, or of the relief or remedy required in the suit, in which case he shall file such statements.

Procedure on admitting plaint.

Concise statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the statement shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend any such statement so as to make it correspondent with the plaint.

The chief ministerial officer of the Court shall sign such endorsement and copies or statements if, on examination, he finds them to be correct.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose and called the Register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

Production of document on which plaintiff sues.

59. If a plaintiff sue upon a document in his possession or power, he shall produce it in Court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

60. In the case of any document not in his possession or power, he shall, if possible, state in whose possession or power it is, and, when it is in the possession or power of a person not a party to the suit, shall take out a summons against such person, requiring him to file the document in Court within such time after the service of the summons as the Court in each case directs, and stating the time so directed.

61. In case of any suit founded upon a bill of exchange or other negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in Court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce

Production of shop-book.



the book at the time of filing the plaint, together with a copy of the entry on which he relies.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and after examining and comparing the copy with the original and attesting the copy if found correct, shall return the book to the plaintiff.

63. A document which ought to be produced in Court by the plaintiff when the plaint is presented or to be entered at the foot of the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant, or handed to a witness merely to refresh his memory.

## CHAPTER VI.

### OF THE ISSUE AND SERVICE OF SUMMONS.

#### *Issue of Summons.*

64. When the plaint has been registered, and the copies or statements required by section 58 have been filed, a summons may be issued to the defendant to appear and answer the claim on a day to be therein specified, or as soon thereafter as may be practicable,

- (a) in person, or
- (b) by a pleader duly instructed and able to answer all material questions relating to the suit, or
- (c) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

65. Every such summons shall be accompanied with one of the copies or statements mentioned in section 58.

66. If the Court see reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

If the Court see reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

67. No party shall be ordered to appear in person unless he resides—

- (a) within the local limits of the Court's ordinary original jurisdiction, or
- (b) without such limits and at a place less than fifty or, where there is railway communication between the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit cognizable by Courts of Small Causes, the summons shall be for the final disposal of the suit.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant, and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed 'sufficient time' must be determined with reference to the circumstances of the case.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

#### *Service of Summons.*

72. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

73. Service of the summons shall be made by delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

74. When there are more defendants than one, service of the summons shall be made on each defendant:

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction, the service may be made, unless the Court directs otherwise, either (a) on one defendant for himself and for the other defendants, or (b) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

75. Whenever it may be practicable, the service shall be on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient.

76. In a suit relating to any business or work

Service on agent by whom defendant carries on business.

against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business of work for such person within such limits, shall be deemed good service.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

77. In a suit for immoveable property, if the

Service on agent in charge, in suits for immoveable property.

summons cannot be served on the defendant in person, and the defendant have no agent empowered to accept the service of the summons, it may be served on any agent of the defendant in charge of the property.

78. If in any suit the defendant cannot be

When service may be on male member of defendant's family.

found, and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him.

*Explanation.*—A servant is not a member of the family within the meaning of this section.

79. When the serving-officer delivers or

Person served to sign acknowledgment.

tenders the copy of the summons to the defendant personally, or to an agent or other person on his behalf, the serving-officer shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons or on a copy thereof signed and sealed as aforesaid.

80. The serving-officer shall, in all cases in

Endorsement of time and manner of service.

which the summons has been served under section 79, endorse or cause to be endorsed on the original summons, or on a copy thereof signed and sealed as aforesaid, the time when and the manner in which the summons was served.

81. If the defendant or other person refuse to

Procedure when defendant refuses to accept service.

sign the acknowledgment or to receive the copy of the summons,

or if the serving officer cannot find the defendant

or cannot be found.

and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

the serving-officer shall return the summons to the Court from which it issued, with an endorsement thereon that he has been unable to serve it.

82. When a summons is returned without

Substituted service.

having been served, the Court shall examine the serving-officer on oath touching the non-service; and if the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous part of the house, if any, in which the defendant is

known to have last resided, or in such other manner as the Court thinks fit.

83. The service substituted by order of the

Effect of substituted service.

Court shall be as effectual as if it had been made on the defendant personally.

84. Whenever service is substituted by order

When service is substituted, time for appearance to be fixed.

of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

85. If the defendant resides within the

Service of summons when defendant resides within jurisdiction of another court and has no agent to accept service.

jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter

Court empowered to accept the service of the summons, such Court shall send the summons either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be most conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

The Court to which the summons is sent shall, upon receipt thereof, deliver it to the proper officer of such Court, to be served, endorsed and returned in the manner hereinbefore directed.

Upon the return of the summons by the serving-officer, if it has not been served, the Court to which it has been sent shall examine him on oath touching the non-service and record the result; and the summons shall be sent back to the Court from which it originally issued, together with the record (if any) made under this paragraph.

86. Whenever any process issued by any

Service within Presidency towns and Rangoon of process issued by Mufassal courts.

Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served

within any such town, it shall be sent to the Court of Small Causes within whose jurisdiction the process is to be served,

and such Court of Small Causes shall cause it to be served in the same manner as if it had issued from such Court,

and, after having been so served, the process shall be returned to the Court from which it issued.

87. If the defendant be in jail, the summons

Service on defendant in jail.

shall be delivered to the officer in charge of the jail in which the defendant is

confined, and such officer shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

88. If the jail in which the defendant is con-

Procedure if jail be in a different district.

finied is not in the district in which the suit is instituted, the summons may be sent

by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it



issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent return the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

91. Nothing herein contained shall prevent the Court from substituting for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions contained in section 92, shall be treated in all respects as a summons.

92. When a letter or other communication is substituted for a summons, it may be sent by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the person whose appearance is required has an agent empowered to accept the service of the summons, it which case in may be served on such agent.

#### Service of Process.

93. Wherever this Code provides that any notice, summons, letter or other communication may be sent to the person to whom it is addressed by post, proof that the same was correctly addressed to such person at his place of residence, and that it was posted and registered according to the law for the time being regulating the management of the Post Office shall, in the absence of evidence to the contrary, be sufficient proof of the due service and delivery of the notice, summons, letter or other communication.

94. Every process required to be issued under this Code shall be served at the expense of the party at whose instance it is issued, unless the Court otherwise directs.

The sum required to defray the costs of such service shall be paid into Court before the process is issued, within a period to be fixed by the Court issuing the process.

Postage, where chargeable on any notice, summons, letter or other communication forwarded by post

and the fee for registering the same, shall be costs required to be paid as aforesaid within the meaning of this section.

In fixing the costs to be paid for service of process, regard shall be had to any law or to any rules issued by the High Court for fixing the amount of such costs.

95. All notices and orders required by this Code to be served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

#### CHAPTER VII.

##### OF THE APPEARANCE OF THE PARTIES AND CONSEQUENCE OF NON-APPEARANCE.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance at the Court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

97. If on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing or serving such summons, the Court may order that the suit be dismissed:

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by a duly authorized agent, when he is allowed to appear by agent.

98. If on the day so fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit may be adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not making the deposit required within the time allowed or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal and appoint a day for proceeding with the suit.

100. If the plaintiff appears and the defendant does not appear, the procedure shall be as follows:—  
(a) if it is proved that the summons was duly served, the Court may proceed *ex parte*:

(b) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant:

(c) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons; the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court may direct as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

102. If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

When a suit is wholly or partially dismissed under this section, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside; and if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under the second paragraph of this section unless the plaintiff has served the defendant with notice in writing of his application.

103. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

104. If there be more plaintiffs than one, and one or more of them appear, and the others of them do not appear, the Court may, at the instance of the plaintiff or plaintiffs who may appear, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

105. If there be more defendants than one, and one or more of them appear, and the others of them do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

106. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or show sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

107. In support of the cause shown by a plaintiff or defendant for failing to appear in person, the Court shall receive any declaration in writing signed by such plaintiff or defendant and verified in manner hereinbefore provided for the verification of plaints.

#### *Of setting aside Decrees ex parte.*

108. In any case in which a decree is passed *ex parte* against a defendant under section 100, he may apply to the Court by which the decree was made for an order to set it aside;

and if it be proved to the satisfaction of the Court that the summons was not duly served, or that the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into Court, or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party.

### CHAPTER VIII.

#### OF WRITTEN STATEMENTS AND SET-OFF.

110. The parties may, at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements, place them on the record, and deal with them as if given in evidence.

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set off.



The Court shall thereupon enquire into the same, and if it find that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other.

Such set-off shall have the same effect as a plaintiff in a cross-suit, so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross-claim.

When the defendant, for the purpose of availing himself of the provisions contained in this section, intentionally relinquishes any portion of his claim against the plaintiff, nothing in section 43 shall apply to the portion so relinquished.

#### Illustrations.

(a) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(b) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A, in which B seeks the set-off.

(c) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods, and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(d) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(e) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A, and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(f) A and B sue C for Rs. 1,000. C cannot set off a debt due to him by A alone.

(g) A sues B and C for Rs. 1,000. B cannot set off a debt due to him alone by A.

(h) A owes the partnership firm of B and C Rs. 1,000. B dies leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set off the debt of Rs. 1,000.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

Provided the Court may at any time require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same:

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such other order in relation to the suit as it thinks fit.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he believes he will be able to prove.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

115. Written statements shall be subscribed and verified in the manner hereinbefore provided for subscribing and verifying complaints, and no written statement shall be received unless it be so subscribed and verified.

The provisions of section 52 as to examining witnesses as to the fact of signature shall apply in the case of written statements.

116. If it appear to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit.

When any amendment is made under this section, the Judge shall attest it by his signature.

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

117. Every allegation of fact in any written statement if not denied specifically or by necessary implication, or stated to be not admitted by the opposite party, shall be taken to be admitted for the purposes of the suit.

## CHAPTER IX.

### OF THE EXAMINATION OF THE PARTIES BY THE COURT.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom he or his pleader is accompanied, may be examined orally by the Court; and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom

he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit.

## CHAPTER X.

### OF DISCOVERY AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

#### Discovery.

**121.** At any time before the settlement of issues, either party may without any order for that purpose, and any party may at any time by leave of the Court, deliver through the Court interrogatories in writing for the examination of the opposite party, or where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court.

**122.** Interrogatories delivered under section 121 shall be served in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, and 81 shall, *mutatis mutandis*, apply to the serving officer.

**123.** The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause enquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

**124.** If any party to a suit be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued whether in its own name or in the name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body, and an order may be made accordingly.

**125.** Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bona fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

**126.** Interrogatories shall be answered by affidavit to be filed in Court within ten days from the service thereof or within such other time as the Judge may allow.

**127.** If any person interrogated omits or refuses to answer, or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further, either by affidavit or by *prima voce* examination as the Judge may direct. Provide that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

#### Admission of Documents.

**128.** Either party may, by a demand made in writing, within a reasonable time, not being less than four days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence), the genuineness of any document material to the suit.

The demand shall be served through the Court in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, and 81 shall, *mutatis mutandis*, apply to the serving officer.

The admission shall also be made in writing, and filed in Court by the other party.

If such demand be not made, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such demand is not complied with within four days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

#### Production of Documents.

**129.** The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

**130.** Any party may apply to the Court for an order directing any other party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit or proceeding.

Every such affidavit shall specify which, if any, of the documents therein mentioned the declarant objects to produce.

**131.** Every party to a suit may at any time before or at the hearing thereof give notice through the Court to any other party in whose plaint, written statement or affidavits



reference is made to any document, to produce such document in the presence of such officer as the Court appoints in this behalf, for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

132. The party to whom such notice is given shall, within four days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents or such of them as he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

134. Except in the case of documents referred to in the plaint, written statement, or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (a) of what documents inspection is sought, (b) that the party applying is entitled to inspect them, and (c) that they are in the possession or power of the party against whom the application is made.

135. If the party from whom discovery of any kind or inspection is sought, objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first, and reserve the question as to the discovery or inspection.

136. If any party fail to comply with any order under this chapter to answer interrogatories or for discovery or inspection, which has been served personally upon him, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended;

and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any party failing to comply with any order under this chapter to answer interrogatories or for discovery or inspection of documents, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

137. The Court may, of its own accord, and may, in its discretion, upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section must, if the Court so require, be supported by an affidavit of the applicant or his pleader, showing how the record is material to the suit in which the application is made and that the applicant cannot obtain a duly authenticated copy of the record or such portion thereof as the applicant requires.

#### *Production of Documents at first Hearing.*

138. The parties or their pleaders shall bring with them and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents or other things specified in any order made under section 130 at any time before the hearing of the suit.

139. No documentary evidence in the possession or power of any party, the production of which has been called for under section 138, and which has not been produced, shall be received at any subsequent stage of the proceedings unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

140. The Court shall receive the documents produced by the parties at the first hearing.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording the grounds of such rejection.

141. No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced, and shall be filed as part of the record:

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry and shall then return the book to the person producing it.

**142.** When a document is rejected by the Court, it shall be endorsed in the manner specified in the last preceding section, with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

The document shall then be returned to the party who produced it.

**143.** Notwithstanding anything contained in sections 62, 141 and 142 the Court may, if it see sufficient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

**144.** In suits in which an appeal is not allowed when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same:

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original:

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

**145.** On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

## CHAPTER XI.

### OF THE SETTLEMENT OF ISSUES.

**146.** Issues arise when a proposition of fact or law is affirmed by the one party and denied by the other.

They are of two kinds: (1) issues of fact, (2) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and

record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first.

Nothing in this section shall be deemed to require the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

**147.** The Court may frame the issues from any of the following materials:—

- (a) allegations made on oath by the parties or by any persons present on their behalf, or made by the pleaders of such parties or persons;
- (b) allegations made in the plaint or in the written statements (if any) tendered in the suit;
- (c) the contents of documents produced by either party and placed on the record.

**148.** If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may compel the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

**149.** The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

**150.** When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing,

(a) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(b) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(c) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

No such agreement shall be filed after the Court has recorded issues in the suit, unless the Judge, for some reason to be recorded under his hand, otherwise directs.



Court if satisfied that the agreement was executed in good faith may give judgment.

151. If the Court be satisfied, after making such enquiry as it deems proper,

(a) that the agreement was duly executed by the parties,

(b) that they have a substantial interest in the decision of such question as aforesaid, and

(c) that the same is fit to be tried and decided, it may proceed to record and try the issue, and deliver its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, give judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

## CHAPTER XII.

### DISPOSAL OF THE SUIT AT THE FIRST HEARING.

152. If at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once give judgment.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or of fact, the Court may at once give judgment for or against such defendant, and the suit shall proceed only against the other defendants.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issue,

and if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them object.

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument as the case requires.

155. If the summons has been issued for the final disposal of the suit, and either party fails to produce his evidence, Court may give judgment.

he relies, the Court may at once give judgment,

or if it is unable to give judgment by reason of additional evidence being required, or for any other cause, the Court shall frame and record, under section 146, the issues requiring to be determined.

Procedure where Court cannot give judgment at first hearing.

## CHAPTER XIII.

### OF ADJOURNMENTS.

156. The Court may, if sufficient cause be shown, at any stage of the suit, grant time to the parties, or to any of them, and may from time to time adjourn the hearing of the suit.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment.

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be absolutely necessary for reasons to be recorded by the hand of the Judge.

157. If, on any day to which the hearing of the suit is adjourned, the parties or either of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Chapter VII, or make such other order as it thinks fit.

158. If either party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

Court may proceed notwithstanding either party fails to produce his evidence.

## CHAPTER XIV.

### OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

159. The parties may, after the summons has been delivered for service on the defendant, if the summons be for the final disposal of the suit;

or after the issues have been recorded, if the summons to the defendant be for the settlement of issues only,

obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such disposal or settlement, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce a document.

160. The person applying for a summons shall pay into Court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the

Expenses of witnesses to be paid into Court on applying for summons.

court in which he is required to attend, and for one day's attendance.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

161. The sum so paid into Court shall be tendered to the person summoned, at the time of serving the summons if it can be served personally.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into Court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the person obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence.

If it be necessary to detain the person summoned for a longer period than one day, the Court may from time to time order the party at whose instance he was summoned, to pay into Court such sum as is sufficient to defray the expenses of his detention for such further period; and in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the persons summoned without requiring him to give evidence.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce, shall be described in the summons with reasonable accuracy.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons if he cause such document to be produced instead of attending personally to produce the same.

165. Any person present in court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

#### *Service of Summons on Persons required to give Evidence or produce Documents.*

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in Chapter VI as to proof

of service shall apply in the case of all summonses served under this section.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

168. If the serving officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall examine the serving-officer on oath touching the non-service:

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may cause a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein;

and a copy of such proclamation shall be affixed on some conspicuous place of the house in which he is dwelling.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170.

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

170. If such person does not appear or appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any:

Provided that if the person whose attendance is required pays into Court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.



*Attendance of Witnesses and Consequence of Non-attendance.*

**171.** Subject to the rules of this Code as to attendance and appearance, and to the provisions of the Indian Evidence Act, if the Court at any time thinks it necessary to examine any person other than a party to the suit, and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

**172.** Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit, must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

**173.** No person so summoned and attending shall depart unless and until (a) he has been examined or has produced the document and the Court has risen, or (b) he has obtained the Court's leave to depart.

**174.** If any person on whom a summons to give evidence or produce a document has been served fails to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court.

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

*Explanation.*—Non-payment or non-tender of a reasonable sum for expenses shall be deemed a lawful excuse within the meaning of this section.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail for his appearance at such time and place as it thinks fit, and on such bail being given, may release him.

**175.** If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169, and 170 shall, *mutatis mutandis*, apply.

**176.** If any party present in Court refuses, without lawful excuse, when required by the Court, to give evidence, or to produce such documents then and there in his actual possession or power, the Court

may in its discretion either pass a decree against him, or make such other order in relation to the suit as the Court thinks fit.

Nothing in this section enables the Court to decree a claim which on the face of the record is not warranted by law.

*Explanation.*—"Lawful excuse" means in this section such an excuse as, under the Indian Evidence Act, 1872, justifies a refusal to give the evidence or produce the document required.

**177.** No one shall be bound to attend in person to give evidence in Court unless he resides—

(a) within the local limits of its ordinary original jurisdiction, or

(b) without such limits and at a place less than fifty or (where there is railway communication between the place where he resides and the place where the Court is situate) two hundred miles distant from the Court-house.

**178.** Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

## CHAPTER XV.

### OF THE HEARING OF THE SUIT AND EXAMINATION OF WITNESSES.

#### *Proceedings on the Hearing.*

**179.** On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

*Explanation.*—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff and contends that on those facts the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

**180.** The other party shall then state his case and produce his evidence (if any). The party beginning is then entitled to reply.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case the party beginning may produce fresh evidence on those issues after the other party has produced all his evidence, and the other party may then reply specially on such fresh evidence; but the party beginning will then be entitled to reply generally on the whole case.

**181.** The evidence of the witnesses in attendance shall be taken orally in open court in the presence and hearing, and under the personal direction and superintendence of the Judge.

182. In cases in which, an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and shall, if necessary, be corrected, and shall be signed, by the Judge.

183. In cases in which the evidence is not taken down in writing, by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

184. Notwithstanding anything contained in section 182, the Local Government may by notification in the official Gazette permit the evidence of witnesses in any Court or class of Courts to be taken down by the Judge with his own hand in English, and may withdraw such permission,

and any Judge may take down the evidence with his own hand in English, if the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object.

185. If the evidence is taken down in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

186. The Court may of its own motion or on the application of any party or his pleader take down, or cause to be taken down, any particular question and answer, or any objection to any question, if there appear any special reason for so doing.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court upon the objection.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

190. If the Judge be rendered unable to take down evidence, or to make a memorandum as above required by this Chapter, he shall cause the reason of such inability to be recorded, and shall cause the evidence to be taken down, or the memorandum to be made in writing from his dictation in open Court.

Every memorandum so made shall form part of the record.

191. Where the Judge taking down any evidence, or causing any memorandum to be made under this Chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court, may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient of the day fixed for the examination shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

193. The Court may at any stage of the suit recall any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act) put such questions to him as the Court thinks fit.

## CHAPTER XVI.

### OF AFFIDAVITS.

194. The Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that the other party *bona fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

195. Upon any application evidence may be given by affidavit, but the Court may on the application of either party order the attendance for cross-examination of the declarant.



**196.** Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except on interlocutory application, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Oath of declarant by whom to be administered. **197.** In the case of any affidavit under this code—

- (a) any Court or Magistrate, or
- (b) any officer whom a High Court may appoint in this behalf, or
- (c) any officer appointed by any other court which the local Government has generally or specially empowered in this behalf, may administer the oath of the declarant.

## CHAPTER XVII.

### OF JUDGMENT AND DECREE.

**198.** The Court, after inspecting the documentary evidence on the record, and examining or hearing the witnesses examined by the parties or their pleaders, and hearing the parties in person or by their respective pleaders or recognized agents, shall pronounce judgment in open Court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

**199.** A Judge may pronounce a judgment written by his predecessor but not pronounced, and in such case he shall not be bound by section 198, except as to giving notice.

**200.** The judgment shall be written in the language of the Court:

Provided that, if such language is not English or the Judge's mother-tongue, the judgment may be written in English or his mother-tongue.

**201.** Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

**202.** The judgment shall be dated and signed by the Judge in open Court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or on review.

**203.** The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

**204.** In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

**205.** The decree shall bear date the day on which the judgment was pronounced; and when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

**206.** The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claim, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error: provided that reasonable notice have been given to the parties or their pleaders of the proposed amendment.

**207.** When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or numbers in a record of settlement or survey, if the decree be for the recovery of a portion only of such property, it shall specify the boundaries or number of such portion.

**208.** When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

**209.** When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court thinks proper to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest not exceeding six per centum per annum on the aggregate sum so adjudged, and on the costs of the suit, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

**210.** In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest.

And on the application of the defendant at any time not more than six months after decree, the Court may order that the amount of the decree be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit: provided that, before granting such application, reasonable notice in writing has been given to the plaintiff or his pleader, and that the Court has heard the objections, if any, made by the plaintiff or on his behalf.

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

**211.** When the suit is for land or other property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of one year from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

*Explanation.*—‘Mesne profits’ of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom.

**212.** When the suit is for immoveable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an enquiry into the amount of mesne profits, and dispose of the same on further orders.

**213.** When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order such accounts and enquiries to be taken and made, and give such other directions as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent;

and all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

*Explanation.*—Applications under section 265 of the Indian Contract Act, 1872, shall be deemed to be suits within the meaning of this section.

**214.** When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

**215.** If the defendant has set off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

The decree of the Court with respect to any sum awarded to the defendant shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

**216.** Certified copies of the judgment and decree shall be furnished to the parties on application to the Court, and at their expense.

## CHAPTER XVIII.

### OF COSTS.

**217.** When disposing of any application under this Code, the Court may give to either party the costs of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

**218.** The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

**219.** The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

**220.** The Court may direct that the costs payable to one party by another shall be set off against a sum which is admitted or is found in the suit to be due from the former to the latter.

**221.** The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of or charged upon the subject-matter of the suit.

**222.** There shall be no appeal on a question solely relating to costs except on either of the following grounds (namely)



(a) that the costs are payable out of or chargeable on some property; or

(b) that the mode in which the costs have been given is inconsistent with some enactment for the time being in force.

*Illustration.*

A, an incumbrancer upon a certain estate, sues to compel the payment of his charge. The Court decrees him his principal and interest, but refuses his costs. A may appeal against this refusal, for every incumbrancer has a lien for his costs on the property charged.

## CHAPTER XIX.

### OF THE EXECUTION OF DECREES.

#### A.—Of the Court by which Decrees may be executed.

**223.** A decree may be executed either by the Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

Notice of every such application should be served on the judgment-debtor, and the Court, after hearing the objections which he or his pleader may urge against the application, may send the decree for execution accordingly.

And the Court to which a decree is sent for execution shall certify to the Court which passed it, the fact of such execution, or where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes, and the Court making it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, the Court making it may send to the local Court of Small Causes the copies and certificate respectively mentioned in clauses (a), (b) and (c) of section 225; and such Court shall thereupon execute the decree as if it had been passed by itself.

Provided that if the Court passing the decree is subordinate to a District Court, it shall send the decree to the District Court to which it is subordinate, and such Court shall deal with the decree as if it had been passed by itself.

**224.** A decree of any Court established by the authority of the Governor-General in Council in the territories of any Native Prince or State in India, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner hereinafter

provided within the jurisdiction of any Court in British India.

*Procedure when Court desires that its own decree shall be executed by another Court.*

**225.** The Court desiring that a decree passed by itself shall be executed by another Court shall send such other Court,—

(a) a copy of the decree;

(b) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained, and what part of the decree remains unexecuted; and

(c) a copy of any order for the execution of the decree, and if no such order has been made, a certificate to that effect.

Provided that if the Court passing the decree is subordinate to a District Court, it shall send such copies and certificate to the District Court to which it is subordinate, and such Court shall forward them to the Court by which the decree is to be executed.

**226.** The Court executing a decree so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the Court, for any special reasons, to be recorded under the hand of the Judge, requires such proof.

**227.** The copy of the decree and of any order for execution, when filed in the Court to which such copy has been sent for the purpose of being executed as aforesaid, shall for such purpose have the same effect as a decree or order for execution made by such Court.

**228.** If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

**229.** The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

#### B.—Of Application for execution.

**230.** When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted unless the Court is satisfied that on the former application due diligence was used to procure complete satisfaction of the decree; and the order of the Court granting such application shall be conclusive evidence that due diligence was used to procure such satisfaction.

And no such subsequent application shall be granted after the expiration of twelve years from any of the following dates (namely)—

(a) the date of the decree sought to be enforced, or

(b) where the decree directs the payment of money or the delivery of property by instalments,—the date of the default in paying or delivering the instalment in respect of which the applicant seeks to enforce the decree, or

(c) where the decree is for money and the decree-holder and the judgment-debtor have entered into an agreement in writing that the amount decreed, with such interest (if any) as may be therein mentioned, shall be discharged by such instalments as, if duly paid, will discharge the said amount and interest at some time within thirty years from the date of the decree, and such agreement has been filed in Court,—the date of the default in paying the instalment in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent any decree-holder from applying for execution of the same after the expiration of the said term of twelve years, where the judgment-debtor has by fraud or force prevented the execution of the decree at some time within twelve years immediately before the date of the application.

231. If a decree has been passed in favour of

Any one of several decree-holders may apply.

more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representatives in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

232. If a decree be transferred by assignment

Application by transferee of decree.

in writing or by operation of law from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided that where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and that the decree shall not be executed until the Court has heard their objections (if any) to such execution:

Provided also that where a decree against several persons has been transferred to one of them, it shall not be executed against the others.

Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

233. When the holder of a decree sent under the foregoing provisions for execution by a Court other than the Court which made it, applies for execution of the decree to the Court to which it has been so sent, such Court, or any subordinate Court to which the execution of the decree may be entrusted, shall proceed to execute the decree according to the provisions of this chapter so far as the same are applicable, and, so far as they are not applicable, according to its own rules in the like cases.

Such Court shall not enquire into the validity of the decree unless it appear upon the face of the decree that the Court by which it was passed had no jurisdiction to pass it.

234. If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply for its execution against the legal representative of the deceased.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may of its own motion, or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

235. The application for the execution of a decree shall be in writing verified in manner hereinbefore provided for the verification of complaints, and shall contain in a tabular form the following particulars, (namely)—

- (a) the number of the suit;
- (b) the names of the parties;
- (c) the date of the decree;
- (d) whether any appeal has been preferred from the decree;
- (e) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;
- (f) whether any and what previous applications have been made for execution of the decree and with what result;
- (g) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;
- (h) the amount of costs, if any, awarded;
- (i) the name of the person against whom the enforcement of the decree is sought; and
- (j) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise, as the nature of the relief sought may require.



**236.** If the application be for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

**237.** If the property be land which, whether it pays revenue to Government or not, is registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

**238.** Every decree-holder applying for an attachment of any moveable property of the judgment-debtor shall annex to his application an inventory of the property to be attached, containing a reasonably accurate description of the same.

#### *C.—Of staying Execution.*

**239.** The Court to which a decree has been sent for execution under this Chapter, shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or the person pending the result of the application for such order.

**240.** Before passing an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor under section 239, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

**241.** No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree.

**242.** Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree shall be binding

upon the Court to which the decree was sent for execution.

**243.** If a suit be pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

**244.** The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely)—

(a) questions regarding the amount of any mesne profits which by the terms of the decree have been directed to be adjusted in the execution of the decree;

(b) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit between the date of its institution and the execution of the decree;

(c) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by the decree.

#### *D.—Of the mode of executing Decrees.*

**245.** The Court, on receiving an application for the execution of a decree, shall ascertain whether it contains the particulars mentioned in section 235, or such of them as may be applicable to the case, and whether it is accompanied by the inventory mentioned in section 238; and if such particulars or inventory are or is wanting, it shall reject the application or return it for amendment or for the addition of the inventory, as the case may be, or amend it then and there. Every amendment made under this section shall be attested by the signature of the Judge.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided that, in the case of a decree for money, the value of the property attached shall as nearly as may be correspond with the amount for which the decree has been made.

**246.** If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum.

If the two sums be equal, satisfaction shall be entered upon both decrees.

*Explanation I.*—The decrees contemplated by this section are (a) decrees made by the same Court, (b) decrees sent to the same Court for execution, and (c) decrees of which one is made by the Court and the other is sent to the same Court for execution; but not (d) decrees of which one is made by one Court and the other is made by another Court, and not sent for execution to the former Court.

*Explanation II.*—This section applies where either party is an assignee of one of the decrees.

*Explanation III.*—This section does not apply unless

(e) both decrees are capable of execution at the same time;

(f) the parties are the same; and

(g) the sums due under the decrees are definite.

#### Illustrations.

(a) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000. In case A fails to deliver certain goods at a future day, B cannot treat his decree as a cross-decree under this section.

(b) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(c) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B, against A, for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

**247.** When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party, but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

**248.** The Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(a) if more than one year has elapsed between the date of the decree and the application for its execution, or

(b) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of the last order passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor if upon a previous application for execution against the same person, the Court has ordered execution to issue against him.

*Explanation.*—In this section the phrase "the Court" means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

**249.** If the person to whom notice is issued under the last preceding section does not appear, or does not show cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

If he offers any objection to the enforcement of the decree, the Court shall pass such order as it thinks fit.

**250.** When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

**251.** The warrant for the execution of the decree shall bear the date of the day on which it is issued, and shall be signed by the Judge or such officer as the Court appoints in this behalf, and shall be sealed with the seal of the Court, and delivered to the proper officer to be executed.

**252.** If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property.

If no such property can be found, and the judgment-debtor fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

**253.** Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof, the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

**254.** Where a decree is against partners in the name of the firm, execution may issue in manner following:—

(a) against any property of the partners as such:

(b) against any person who has admitted in the suit that he is or has been adjudged to be a partner:

(c) against any person who has been served as a partner, with the summons, and has failed to appear.

If the decree-holder claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court for leave so to do; and the Court may give such leave if notice of the application has been served on such other person and the liability to execution is not disputed, or, if such liability is disputed, may try and determine the same in any manner, in which any issue or question in a suit may be tried and determined.



**255.** Every decree or order directing a party to pay money, whether by way of compensation, or costs, or otherwise, shall be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

*Explanation.*—A decree for mesne profits or any other matter, the amount of which, in money, is to be subsequently determined, is a decree for money within the meaning of this section.

**256.** When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

**257.** Payment of a sum of money ordered to be paid as the alternative to some other relief granted by the decree shall be enforced in manner hereinbefore provided for the execution of a decree for money.

**258.** All money payable under a decree shall be paid as follows (namely)—

- (a) into the Court whose duty it is to execute the decree, or
- (b) out of Court to the decree-holder, or
- (c) otherwise as the Court which made the decree directs.

If the money is paid out of Court or the decree is otherwise adjusted to the decree-holder, he shall certify the payment or adjustment to the Court whose duty it is to execute the decree; and no satisfaction of a decree in part or in whole by such payment or adjustment shall be recognized by such Court unless the payment or adjustment be certified as aforesaid. Where the decree-holder fails to certify as aforesaid, the judgment-debtor or his pleader may, within eight days of the date of payment, apply to such Court for an order compelling the decree-holder to certify as aforesaid, and the Court, after hearing the decree-holder or his pleader, may make such order.

**259.** If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it shall be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor, or by attaching his property and keeping the same under attachment until the further order of the Court, or by both imprisonment and attachment, if necessary.

No attachment under this section shall remain in force for more than six months, at the end of which time, if the judgment-debtor has not obeyed the decree, the property attached may be sold, and out of the proceeds the Court may

award to the decree-holder such compensation as it thinks fit, and pay the balance, if any, to the judgment-debtor on his application.

**260.** When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, has been made, has had an opportunity of obeying the decree or injunction, and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the judgment-debtor has not obeyed the decree, the property attached may be sold and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

**261.** If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution upon the proper stamp-paper, if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree, and execute the duplicate so altered.

Provided that if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

**262.** The execution of a conveyance or the endorsement of a negotiable instrument by the Court under the last preceding section may be in the following form: "*C. D.*, Judge of the Court of (or as the case may be), for *A. B.*, in a suit by *E. F.*, against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

**263.** If the decree be for the delivery of any immoveable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or to such person as

he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

**264.** If the decree be for any immoveable property in the occupancy of a tenant, or other person entitled to occupy the same, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Provided that if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

**265.** If the decree be for the partition or for the separate possession of a share of an undivided estate, paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector.

#### *E.—Of Attachment of Property.*

**266.** The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, share in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale (namely) —

- (a) the necessary wearing apparel of the judgment-debtor, his wife and children:
- (b) tools of artisans, implements of husbandry and cattle kept *bona fide* for agricultural purposes:
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists:
- (d) books of account:
- (e) mere rights to sue for damages:
- (f) the right to perform the service of an idol:
- (g) stipends allowed to military and civil pensioners of Government, and political pensions:
- (h) the salary of a public officer or of the servant of a Railway Company:
- (i) the pay and allowances of persons to whom the Native Articles of War apply:
- (j) the wages of labourers and domestic servants:
- (k) an expectancy of succession by survivorship:
- (l) a right to future maintenance.

Provided also that nothing in this section shall be deemed to affect the statute for the time being in force for punishing mutiny and desertion and

for the better payment of the Army and their quarters.

**267.** The Court may of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property.

**268.** In the case of (a) a debt not secured by a negotiable instrument, (b) a share in the capital of any public company or corporation, (c) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

(a) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court:

(b) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon:

(c) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the Court-house, and another copy of the same shall be sent in the case of the debt to the debtor, in the case of the share to the proper officer of the company or corporation, and in the case of the other moveable property (except as aforesaid) to the person in possession of the same.

A debtor prohibited under clause (a) of this section may pay the amount of his debt into Court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

No attachment under this section shall remain in force for more than six months; at the end of which time, if the judgment-debtor has not obeyed the decree, the property attached may be sold, and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and pay the balance, if any, to the judgment-debtor on his application.

**269.** If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that when the property seized is subject to speedy and natural decay, the proper officer may sell it at once.

The Local Government may from time to time make rules for the maintenance and custody, while under attachment, of livestock and other moveable property, and the officer



attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

**270.** If the property be a negotiable instrument not in deposit in a Court, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to the further orders of the Court.

Attachment of negotiable instruments.

**271.** If the person executing any process under this Code directing or authorizing seizure of moveable property, has gained access to a house or other building, he may unfasten and open the door of any room in which he has reason to believe any such property to be:

Provided that if the room be in the actual occupancy of a woman, who according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Seizure of property in zanánás.

**272.** If the property be deposited in, or in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues:

Attachment of property deposited in Court or with Government officer.

Provided that, if such property is deposited in a Court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by the Court in which such property is deposited.

**273.** If the property be a decree passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

Attachment decree.

If the property be a decree passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to be executed, requesting the former Court to execute its decree and to apply the proceeds in satisfaction of the decree sought to be executed. The Court receiving such notice shall comply with such request. And the holder of any decree attached under this clause shall be bound to give the Court executing the same such information and aid as may reasonably be required.

**274.** If the property be immoveable, the attachment shall be made by a proclamation prohibiting the judgment-debtor from

Attachment of immoveable property.

alienating the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise.

The proclamation shall be made at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the proclamation shall be fixed up in a conspicuous part of the property and of the court-house.

A copy of the proclamation shall also be fixed up in the office of the Collector of the District in which the land is situate.

**275.** If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into Court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

Order for withdrawal of attachment after satisfaction of decree.

**276.** When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage, or otherwise, and any payment of the debt or dividend or a delivery of the share to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

Private alienation of property after attachment to be void.

**277.** If the property attached is coin or currency notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Court may direct coin or currency notes attached to be paid to party entitled.

**278.** If any claim be preferred to, or any objection be made to the attachment of, any property attached, in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit.

Investigation of claims to, and objections to attachment of attached property.

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

**279.** The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

**280.** If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was

Release of property from attachment.

so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property wholly or to such extent as it thinks fit, from attachment.

**281.** If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

**282.** If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

**283.** An order under section 280, 281, or 282 shall not preclude the person against whom it is made from instituting a suit to establish the right which he claims to the property in dispute.

**284.** A claim to attached property, or an objection to the attachment of such property, shall be made without delay to the Court which ordered the attachment;

and no such investigation shall be made where the Court considers that the claim or objection was designedly and unnecessarily delayed.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the sale may postpone it pending the investigation of the claim or objection.

**285.** Any Court may order that any moveable property, and any Court not subordinate to a District Court may direct that any immovable property, which has been attached or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

#### *F.—Of Sale and Delivery of Property.*

##### *(a)—General Rules.*

**286.** Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and except as provided in section 296, shall be made by public auction in manner herein-after mentioned.

**287.** When any interest in property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale; and shall specify as fairly and accurately as possible—

- (a) the interest to be sold;
- (b) the revenue assessed upon the estate or part of the estate, when the interest to be sold is an interest in an estate or a part of an estate paying revenue to Government;
- (c) any incumbrance to which the interest is liable;
- (d) the amount for the recovery of which the sale is ordered; and
- (e) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may from time to time alter any rules so made.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

**288.** No judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287 unless the same has been committed or made dishonestly.

**289.** The proclamation shall be made in manner prescribed by section 274, on the spot where the property is attached.

If the Court so direct, such notification shall also be published in the official Gazette and in some local newspaper.

**290.** Except in the case of articles subject to speedy and natural decay (which may be sold at once), no sale under this chapter shall take place until after the expiration of at least thirty days in the case of immovable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the notification has been affixed in the Court-house of the Judge ordering the sale.

**291.** The officer conducting any sale under this chapter may in his discretion adjourn the sale; and every such sale shall be stopped if, before the lot is knocked down, the debt and costs are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

**292.** No officer having any duty to perform in connection with any sale under this chapter shall bid for, acquire, or attempt to acquire, any interest in any property sold at such sale.

**293.** The deficiency of price (if any) which may happen on a re-sale under this Code, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.



**294.** No holder of a decree in execution of which property is sold, shall, without the express permission of the Court, bid for or purchase the property.

Decree-holder not to bid for or buy property without permission.

When a decree-holder purchases with such permission, the amount due on the decree may be taken as payment in whole or in part, as the case may be, of the purchase-money.

If decree-holder purchase, amount of decree may be taken as payment.

**295.** Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the proceeds, after deducting the costs of the realization, shall be divided rateably among all such persons.

Proceeds of execution sale to be divided rateably among decree-holders.

Provided that, when any property is sold subject to a mortgage, the mortgagee shall not be entitled to share in any surplus arising from such sale.

Proviso where property is sold subject to mortgage.

Provided also that when any property liable to be sold in execution of a decree is subject to a mortgage, the Court may, with the assent of the mortgagee, order that the property be sold free from the mortgage, giving to the mortgagee the same right against the proceeds of the sale as he had against the property sold.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

*(b).—Rules as to Moveable Property.*

**296.** If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

Rules as to negotiable securities and shares in public Companies.

**297.** If the property sold be moveable, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and in default of payment, the property shall forthwith be again put up and sold.

Payment for moveable property sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

**298.** No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Irregularity not to vitiate sale of moveable property, but any person injured may sue.

**299.** When the property sold is any moveable property, or a negotiable instrument, of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of moveable property belonging to defendant actually seized.

**300.** When the property sold is any moveable property to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

Delivery of moveable property to which judgment-debtor is entitled subject to lien.

**301.** When the property is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the Manager, Secretary or other proper officer of the Company from permitting any such transfer, or making any such payment to any person except the purchaser.

Delivery of debts and of shares in public Companies.

**302.** If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing, is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

Transfer of negotiable instruments and shares.

The endorsement or execution shall be in the following form or to the like effect:—"A. E. by C. D., Judge of the Court of (or as the case may be); in a suit by E. F. against A. B."

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made or document executed or receipt signed as aforesaid shall be as valid and effectual for all purposes, as if the same had been made or executed or signed by the party himself.

*(c).—Rules as to Immoveable Property.*

**303.** Sales of immoveable property in execution of a decree may be ordered by any Court not subordinate to a District Court.

Sales of land by Court not inferior to a District Court.

**304.** Whenever a Court subordinate to a District Court desires that any interest in immoveable property be sold in execution of a decree, it shall refer the case to the District Court to which it is subordinate, and such Court shall have the same power of causing the said interest to be sold as if the decree had been made by itself.

Procedure as to sale of land in execution of decree of subordinate Court.

Nothing in this section applies to Courts of Small Causes.

**305.** When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court conducting the sale that there is reason to believe

Postponement of sale of land to enable defendant to raise amount of decree.

that the amount of the decree may be raised by mortgage or lease, or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale for such period as it thinks proper, to enable him to raise the amount.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, to make the proposed mortgage, lease, or sale: provided that all moneys payable under such mortgage, lease or sale shall be paid into Court and not to the judgment-debtor.

Where such certificate has been granted and so long as it remains in force, the provisions of section 248 shall not apply, and the year mentioned in that section, clause (a), shall be computed from the date of the expiry of the certificate.

The Court may, on the application of the judgment-debtor, sell any other immoveable property of the judgment-debtor in lieu of the property comprised in such order.

**306.** On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

**307.** The full amount of purchase-money shall be paid by the purchaser before sunset of the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

**308.** In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

**309.** Every re-sale of immoveable property in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

**310.** When the property sold in execution of a decree is a share of undivided immoveable property, if the lot has been knocked down to a stranger, any co-sharer may, by application to the officer conducting the sale, claim to take the share sold at the sum at which the lot was so knocked down.

If the claim be made before sunset on the day of sale, and the claimant then repay to the purchaser the amount of his deposit, the claimant shall be substituted for the person to whom the lot has been so knocked down and shall be bound by all the conditions then binding on the purchaser,

and the provisions of the last three preceding sections shall apply.

**311.** Any person whose interest in immoveable property has been sold under this chapter may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

but no sale shall be set aside on the ground of irregularity, unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

**312.** If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit.

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

No suit to set aside an order passed under this section shall be brought by the party against whom such order has been made.

**313.** The purchaser at any such sale may, within sixty days from the date of the sale, apply to the Court to set aside the sale on the ground that the person whose interest in the property purported to be sold had no legally saleable interest therein, and the Court may make such order as it thinks fit.

**314.** No sale of immoveable property shall become absolute until it has been confirmed by the Court.

**315.** When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property sold, and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The repayment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

**316.** When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant the purchaser a certificate to the effect that he has purchased such property, and such certificate shall be deemed to be a valid transfer of such interest.

**317.** The certificate shall state the name of the person who, at the time of sale, is declared to be the purchaser and the date of the attachment; and the purchase shall be deemed to take effect from such date.

No person shall maintain any suit against the certified purchaser on the ground that the purchase

Sale of land not set aside on ground of irregularity unless in case of substantial injury.

Effect of objection being disallowed and of its being allowed.

Power to apply to set aside the sale.

Confirmation of sale.

If sale set aside, price to be returned to purchaser.

Certificate to purchaser of immoveable property.

Certificate to state name of actual purchaser.

Benami purchaser not recognized.

Co-sharer of a share of undivided estate sold in execution may claim share at same price.

Notification on re-sale of immoveable property.

Procedure in default of payment.

Time for payment in full.

Deposit by purchaser of immoveable property.



was made on behalf of such other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

**318.** When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the defendant subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf, in possession of the property; and, if need be, by removing any person who refuses to vacate the same.

**319.** When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

**320.** The local Government may, with the sanction of the Governor-General in Council, declare by notification in the official Gazette that in any local area the execution of decrees in cases in which a Court has ordered any interest in immoveable property to be sold, shall be transferred to the Collector; and rescind or modify any such declaration. The local Government may also from time to time prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same.

**321.** Whenever the execution of a decree has been so transferred, if the Collector has reason to believe that the judgment-debts of the judgment-debtor can be discharged without a sale of the whole of such interest, the Collector may (notwithstanding any order under section 303, but subject to such rules as may from time to time be made in this behalf by the Chief Controlling Revenue Authority) raise the amount necessary to discharge such debts with interest thereon according to the decree, or, if the decree makes no provision as to interest, then with interest (if any) as he thinks fit not exceeding the rate of six per cent. per annum,

(a) by selling part of the judgment-debtor's interest in such property or in any other immoveable property:

(b) by mortgaging the whole or any part of such interest:

(c) by letting on farm or managing by himself or another, the whole or any part of such interest for any term not exceeding twenty years from the date of the order of sale, or

(d) partly by one of such modes and partly by another or others of them.

For the purpose of managing under this section the whole or any part of such interest, the Collector may exercise all the powers of its owner.

**322.** If the Collector proposes to proceed under this section, he shall publish a notice in the language of the district, calling upon all persons holding decrees against the judgment-debtor to notify the same in writing to the Collector within sixty days from the date of the publication.

Such notice shall be published by being posted at the Court which made the order under section 303, and at such other places (if any) as the Collector thinks fit.

So long as any letting or management under this section continues, the judgment-debtor and his representative in interest shall be incompetent to mortgage, charge, lease or alienate the interest so let or managed, or any part thereof.

**323.** If on the expiration of the letting or management, the amount necessary to discharge such debts in full with the interest (if any) payable thereon has not been raised, the Collector shall notify the fact in writing to the judgment-debtor or his representative, stating at the same time that, if the balance necessary to discharge such debts and interest is not paid to the Collector within six weeks of the date of such notice, the Collector will proceed to sell the judgment-debtor's interest in the said property; and if on the expiration of the said six weeks, the said balance is not so paid, the Collector shall sell such interest accordingly.

**324.** Whenever the Collector sells any interest pursuant to the said order of sale, or exercises any of the powers conferred upon him by the last preceding section, he shall inform the Court which made such order of the fact of such sale or exercise, and shall render accounts to such Court of his receipts and payments in respect of the said interest, and shall hold the balance at the disposal of such Court.

Such balance (after deducting therefrom any debts due or liabilities incurred to Government by the judgment-debtor) shall be applied rateably in discharging the claims of all the decree-holders who have complied with the said notice; and no other person making any claim against the interest so let or managed or against such proceeds, shall be entitled to be paid thereout.

**325.** When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to make provision for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. The provisions of sections 321 to 324 (both inclusive) shall in such case apply to the Collector.

326. The local Government may from time to time, with the sanction of the Governor-General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, or prohibiting such sales

(a) where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value:

(b) where, for reasons of State, the Local Government thinks that such class of interests should not be compulsorily transferable:

and if, when this Code comes into operation in any local area, any such rules or prohibition are or is in force therein, the Local Government may continue such rules or prohibition in force, or may from time to time modify the same with the sanction of the Governor-General in Council.

All rules and prohibitions so made or continued, and all modifications of such rules, shall be published in the local official Gazette, and shall thereupon have the force of law.

#### G.—Of Resistance to Execution.

327. If in the execution of a decree for the possession of property, the officer entrusted with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

328. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, on the ground that the property is not comprised in the decree or on any other ground, the Court shall enquire into the matter of the complaint, and pass such order as it thinks fit.

329. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining effectual possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder, and without prejudice to any proceedings to which such judgment-debtor or other person may be liable, under the Indian Penal Code, or any other law, for the punishment of such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term not exceeding thirty days, and direct that the decree-holder be put into possession of the property.

330. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit

between the decree-holder as plaintiff and the claimant as defendant;

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punishment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of the Specific Relief Act, section 9,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

331. If any person other than the defendant is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bona fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant, it appears to the Court that there is probable cause for making the application, the application shall be numbered and registered as a suit between the applicant as plaintiff and the decree-holder as defendant, and the Court shall proceed to investigate the matter in dispute in the same manner and with the like power as if a suit for the property had been instituted by the applicant against the decree-holder under the provisions of the Specific Relief Act, section 9,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

In hearing applications under this section the Court shall confine itself to the grounds of dispute above specified.

Nothing in this section or section 330 applies to a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree is made.

332. The order passed under either of sections 330 and 331 shall be in the nature of, and shall have the same force as, a decree in a suit, and shall be subject to the same conditions as to appeal or otherwise.

333. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf, in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him, shall be applicable.

334. If it appear that the resistance or obstruction was occasioned by any person other than the judgment-debtor, not in possession of the property sold, but claiming a right thereto as proprietor, mortgagee, lessee, or under any other title, the Court, on the complaint of the purchaser, shall enquire into the matter of,



the resistance or obstruction, and pass such order thereon as it thinks fit.

The party against whom such order is passed may bring a suit to establish his right to the present possession of the property at any time within one year from the date of such order.

#### *H.—Of Arrest and Imprisonment.*

**335.** A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the jail of the district in which the Court ordering the imprisonment is held, or, when such jail does not afford suitable accommodation, in any other jail which the Local Government may appoint for the confinement of persons ordered to be imprisoned by the Courts of such district:

Provided that when the decree in execution of which a judgment-debtor is arrested is a decree for money, and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

Whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under Chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application, and if he places all his property in possession of a receiver appointed by the Court.

If the judgment-debtor express his intention so to apply, and if he furnish sufficient security for his appearance at any time when called upon, the Court shall release him from arrest.

**336.** Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court.

**337.** A day shall be specified in the warrant on or as soon as possible after which it is to be returned,

and unless the amount which the judgment-debtor has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid, such officer shall bring him before the Court with all convenient speed.

**338.** The Local Government may from time to time prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors.

**339.** No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his

subsistence such monthly allowance as he may be entitled to according to the said scales, or where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, to the proper officer of the Court by monthly payments in advance before the first day of each month.

The first payment shall be made for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail.

**340.** Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs on the suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

**341.** The judgment-debtor shall be discharged from jail, Release of judgment-debtor.

- (a) on the decree being fully satisfied, or
- (b) at the request of the person on whose application he has been imprisoned, or
- (c) on such person omitting to pay the allowance as hereinbefore directed, or
- (d) if the judgment-debtor be declared an insolvent, as hereinafter provided, or
- (e) when the term of his imprisonment as limited by section 342 is fulfilled.

Provided that in the first, second, third and fourth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section cannot be re-arrested under the decree in execution of which he was imprisoned.

**342.** No person shall be imprisoned in execution of a decree for a longer period than six months; or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

**343.** The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in which it was executed; and if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay; or, if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it think fit, summon and examine witnesses as to such inability and shall record the result.

### CHAPTER XX.

#### OF INSOLVENT JUDGMENT-DEBTORS.

**344.** Any person arrested or imprisoned in execution of a decree for money may apply in writing to be declared an insolvent.

Power to apply to be declared an insolvent.

Such application shall be made to the District Court which ordered his arrest or imprisonment, or when the District Court did not make such order, then to the District Court to which the Court that made the order is subordinate.

**345.** The application shall set forth—

(a) the fact of such person's arrest or imprisonment, the Court by whose order he was arrested or imprisoned, and the place in which he is in custody;

(b) the amount, kind and particulars of his property, and the value of any such property not consisting of money;

(c) the place or places in which such property is to be found;

(d) his willingness to place it at the disposal of the Court;

(e) the amount and particulars of all pecuniary claims against him; and

(f) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

**346.** The application shall be subscribed and verified by the applicant in manner hereinbefore prescribed for subscribing and verifying plaints.

**347.** The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in Court and served at the applicant's expense on the holder of the decree in execution of which he was arrested or imprisoned, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit.

**348.** The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

**349.** Where the applicant is under arrest, the Court may, pending the hearing under section 350,

(a) order him to be immediately committed to jail; or

(b) leave him in the custody of the officer of Court to whom the service of the warrant was entrusted.

**350.** On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the applicant, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application and the other persons (if any) alleging themselves to be creditors, in opposition to the applicant's discharge; and may, if it thinks fit, grant

time to the said decree-holder and other creditors or persons to adduce evidence showing that the applicant is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of Receiver. **351.** If the Court is satisfied—

(a) that the statements in the application are substantially true;

(b) that the applicant has not, with intent to defraud his creditors, concealed, transferred, or removed any part of his property within two months next before the date of the decree in execution of which he was arrested or imprisoned or at any subsequent time;

(c) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted or given an unfair preference to any of his creditors by any payment or disposition of his property;

(d) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it think fit, make an order appointing a Receiver of his property, or if it does not appoint such Receiver, may discharge the insolvent.

**352.** The creditors mentioned in the application and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall frame a schedule of the persons who have proved themselves to be the insolvent's creditors, and of their respective debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the court-house.

**353.** Any creditor of the insolvent who is not mentioned in such schedule may, within three months from its publication, apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and in case he proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may within three months from the publication of the schedule apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors and hearing their objections, if any, may comply with or reject the application.

**354.** Every order under section 351 shall be published in the official Gazette and shall operate to vest in the Receiver all the

Effect of order appointing Receiver.



insolvent's property (except the particulars specified in the first proviso to section 266) whether set forth in his application or not.

**355.** The Receiver so appointed shall give such security as the Court may direct, and shall possess himself of all such property, except as aforesaid;

Receiver to give security and collect assets.

Discharge of insolvent.

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent from arrest or imprisonment, as the case may be, upon such condition (if any) as the Court thinks fit.

**356.** The Receiver shall proceed under the direction of the Court—

(a) to convert the property into money:

(b) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government:

(c) to pay the said decree-holder's costs:

(d) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts, and without any preference;

and such Receiver may retain as a remuneration for the performance of his duties a commission at the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution), and shall deliver the surplus, if any, to the insolvent or his legal representative.

His right to remuneration.

Delivery of surplus.

**357.** An insolvent discharged under section 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266, and except the property vested in the Receiver) shall, by order of the Court, be liable to attachment and sale until the decrees against him held by the scheduled creditors are fully satisfied or become incapable of being executed.

**358.** If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may declare the insolvent discharged as aforesaid absolved from further liability in respect of such debts.

When Court may declare insolvent absolved from further liability.

**359.** Whenever, at the hearing under section 350, it is proved that the dishonest applicant has

(a) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(b) fraudulently concealed, transferred or removed any property; or

(c) committed any other act of bad faith regarding the matter of the application;

the Court shall, at the instance of any of his creditors, sentence him to imprisonment for a term not exceeding one year from the date of commitment.

Or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

**360.** The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district and so invested any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.

Investment of other Courts with powers of District Courts.

Transfer of cases.

## PART II.

### OF INCIDENTAL PROCEEDINGS.

#### CHAPTER XXI.

#### OF THE DEATH, MARRIAGE, AND INSOLVENCY OF PARTIES.

**361.** The death of a plaintiff or defendant shall not cause the suit to abate if the cause of action survives.

No abatement by party's death, if cause of action survive.

#### Illustrations.

(a.) A convenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree: the cause of action survives to C, and the suit does not abate.

(b.) In the same case, all the parties die before decree. The cause of action survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(c.) A sues B for libel. A dies. The cause of action does not survive and the suit abates.

(d.) A, a member of a Hindu joint family under the Mitákshará law, institutes a suit for partition of the family property. A dies leaving B, a minor son, his heir. The cause of action survives to B, and the suit does not abate.

**362.** If there be more plaintiffs or defendants than one, and any of them dies, and if the cause of action survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

**363.** If there be more plaintiffs than one, and any of them dies, and if the cause of action does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

**364.** If no application be made to the Court within a reasonable time, not exceeding thirty days, by any person claiming to be the legal representative of

Proceeding where no application made by representative of deceased plaintiff.

a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative (if any) of the deceased plaintiff shall be made a party, and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

**365.** In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, on the application of the legal representative of the deceased, enter his name in the place of such plaintiff on the record, and the suit shall thereupon proceed.

**366.** If no such application be made to the Court within a reasonable time, not exceeding thirty days, by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff and for proceeding with the suit in order to a final determination of the matter in dispute.

*Explanation.*—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

**367.** If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

**368.** If there be more defendants than one, and any of them die before decree and the cause of action does not survive against the surviving defendant or defendants alone, and also in case of the death of a sole defendant, or sole surviving defendant, where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description, and place of abode of any person whom he alleges to be the legal representative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

**369.** The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and where the decree is against a female defendant, it may thereupon be executed against the wife alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

**370.** The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit and to give security for the costs thereof within such time as the Court may order.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may, within eight days after such neglect or refusal, apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be recovered from the plaintiff's estate.

**371.** When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

But the person claiming to be the representative of the deceased bankrupt or insolvent plaintiff, may apply for an order to set aside the order for abatement or dismissal; and if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

**372.** In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come, either in addition to or in substitution for the person from whom it has passed, as the case may require.



## CHAPTER XXII.

## OF THE WITHDRAWAL AND ADJUSTMENT OF SUITS.

**373.** If, at any time after the institution of the suit, but before judgment, the Court is satisfied on the application of the plaintiff (a) that the suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for permitting him to withdraw from the suit, or to abandon part of his claim with liberty to bring a fresh suit for the subject-matter of the suit or for the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

**374.** In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

**375.** If a suit be adjusted by mutual agreement or compromise, or if the defendant satisfy the plaintiff in respect to the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith, and such decree shall be final.

## CHAPTER XXIII.

## OF PAYMENT INTO COURT.

**376.** The defendant in any suit to recover a debt or damages, may, at any stage of the suit, deposit in Court such sum of money as he considers a satisfaction in full of the claim.

**377.** Notice of the deposit shall be given by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

**378.** No interest shall be allowed to the plaintiff on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

**379.** If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall file in Court a statement to that effect, and the Court shall pass judgment accordingly, and in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

## Illustrations.

(a.) A owes B Rs. 100. B sues A for the amount, having made no demand for payment, and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into Court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(b.) B sues A under the circumstances mentioned in illustration (a). On the plaint being filed, A disputes the claim. Afterwards A pays the money into Court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(c.) A owes B Rs. 100 and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed A pays Rs. 100 into Court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

## CHAPTER XXIV.

## OF REQUIRING SECURITY FOR COSTS.

**380.** When the plaintiff ordinarily resides out of British India, and does not possess any sufficient immoveable property within British India independent of the property in suit, he shall, if any defendant so requires, on presenting the plaint or within such time as the Court may fix, furnish security for the payment of the costs that may be incurred by the defendant.

**381.** If at any subsequent stage of a suit it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are, residing out of British India, and such plaintiff or plaintiffs does not or do not possess any sufficient immoveable property within British India, independent of the property in suit, the Court may, on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by such defendant.

In the event of such security not being furnished within the time so fixed, the Court shall pass a decree against the plaintiff or plaintiffs by default, unless he or they be permitted to withdraw from the suit under the provisions of section 373.

**382.** A person is considered to be resident out of British India, within the meaning of sections 380 and 381 who leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs.

## CHAPTER XXV.

## OF COMMISSIONS.

*A.—Commissions to examine Witnesses.*

**383.** Any Court may by order issue a commission for the examination on interrogatories or otherwise of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are from sickness or infirmity unable to attend it.

**384.** Such order may be made by the Court either of its own motion, or on the application, supported by affidavit, of any party to the suit or proceeding or of the witness to be examined.

**385.** The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any person whom the Court issuing the commission thinks proper to appoint to execute the same :

Provided that where the Court issuing the commission is subordinate to a District Court, and is not a Court of Small Causes, the exercise of the power conferred by this section shall be subject to such rules as the District Court may from time to time prescribe, as to the officers or persons to whom commissions may be issued.

**386** Any District Court and any Court of Small Causes may issue a commission for the examination of—

(a) any person resident beyond the local limits of its jurisdiction,

(b) persons who are about to leave such limits before the date on which they are required to be examined in Court, and

(c) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

If the suit in which it is desired to issue such commission be pending in any Court (other than a Court of Small Causes) subordinate to the District Court, the District Court may issue it on the application of such subordinate Court.

Such commission shall ordinarily be issued to any Court not being a High Court, within the local limits of whose jurisdiction such person resides, and which can most conveniently execute the same :

Provided that if he resides beyond the local limits of the jurisdiction of the Court issuing the commission and within the towns of Calcutta, Madras, Bombay, or Rangoon, the commission shall be issued to the Court of Small Causes within whose jurisdiction he resides :

Provided also that, under special circumstances, the commission may be directed to any person whom the Court issuing the commission thinks fit to appoint.

The Court on issuing any commission under this section shall direct whether the commission shall be returned to itself or to any subordinate Court.

**387.** In the case of a person residing at any place not within British India, the Court, if satisfied that the evidence of such person is necessary, may, of its own motion or on the application of any of the parties to the suit, issue a commission for his examination.

**388.** Every Court receiving a commission for the examination of any person shall examine him pursuant thereto.

**389.** After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order ; and the commission and the return thereto, and the evidence taken under it, shall form part of the record of the suit.

**390.** Evidence taken under a commission shall not be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(a) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or

(b) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

**391.** The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

(a) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor-General in Council, or

(b) Courts situate in any part of the British Empire other than British India, or

(c) Courts of any foreign country for the time being in alliance with Her Majesty.

*B.—Commissions for Local Investigations.*

**392** In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court :

Provided that when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.



**393.** The Commissioner, unless otherwise directed by the order of appointment, may examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him.

The Commissioner may also call for and examine documents and other papers relevant to the subject of enquiry.

The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, subscribed with his name, to the Court.

**394.** The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit, and shall form part of the record; but the Court, or any of the parties to the suit may, with the permission of the Court, examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

#### C.—Commissions to examine Accounts.

**395.** In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

**396.** The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his examination.

**397.** The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further enquiry as is requisite.

#### D.—General Provisions.

**398.** Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission, to be paid into Court by the party at whose instance or for whose benefit the commission is issued.

**399.** The provisions of this Code relating to the summoning, attendance, and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give

evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situated beyond, the limits of British India.

**400.** Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

If the parties do not so appear, the Commissioner may proceed *ex parte*.

## PART III.

### OF SUITS IN PARTICULAR CASES.

#### CHAPTER XXVI.

##### SUITS BY PAUPERS.

**401.** Subject to the following rules, any suit may be brought by a pauper.

*Explanation.*—A person is a 'pauper' when he is not possessed of sufficient means to enable him to pay the fee prescribed for by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

**402.** No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault.

**403.** The application for permission to sue by a pauper shall be in writing, and shall contain the particulars required by section 50 in regard to the contents of application. of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be subscribed and verified in the manner hereinbefore prescribed for the subscription and verification of plaints.

**404.** Notwithstanding anything contained in section 40, the application shall be presented to the Court by the applicant in person unless he is exempted from appearing in Court under section 642 or 643, in which case the application may be presented by a duly authorized agent, who can answer all material questions relating to the application, and who shall be liable to be examined in the same manner as the party represented by him might have been examined had such party attended in person.

**405.** If the application be not framed or presented in the manner laid down in sections 403 and 404, the Court shall reject it.

**406.** If the application be in form and duly presented, the Judge shall examine the petitioner, or his agent when the applicant

is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a Commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

If presented by agent, Court may order applicant to be examined by Commission.

Rejection of application.

407. If it appear to the Court upon such examination

(a.) that the applicant is not a pauper, or  
(b) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter, or

(c) that his allegations do not show a right to sue in such Court,

the Court shall reject the application.

408. If upon such examination the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day, of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader, for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

409. On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under chapter V, except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by Government from any party ordered by the decree to pay the same, in the same manner as costs of suit are recoverable under this Code.

Procedure if application admitted.

Costs when pauper succeeds.

Recovery of court-fees.

412. If the plaintiff fails in the suit, or if he is dispaupered, the Court shall order the plaintiff, or any person made under section 82 co-plaintiff to the suit to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper;

and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

413. Refusal to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(a) if he is guilty of vexatious or improper conduct in the course of the suit;

(b) if it appears that his means are such that he ought not to continue to sue as a pauper, or

(c) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

415. The costs of an application for permission to sue as a pauper and of an enquiry into pauperism are costs in the suit.

Costs.

## CHAPTER XXVII.

### SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

416. Suits by or against the Government shall be brought by or against (as the case may be) the Secretary of State for India in Council.

Suits by or against Secretary of State in Council.

No suit against the Secretary of State for India in Council and no suit against a public officer for any act alleged to be done by him in his official capacity shall be instituted in any Court inferior to a District Court. Any such suit may be transferred by order of the Court in which it is instituted to any Court subordinate thereto, and otherwise competent to entertain such suit.

Nothing contained in the second paragraph of this section shall affect suits to which Government is a party, the trial whereof is provided for by any local law.

417. Persons being *ex-officio* or otherwise authorized to act for Government in respect of any judicial proceeding, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.

Persons authorized to act for Government.



**418.** In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council."

**419.** The person appointed to act as pleader on the part of Government in any Court, shall be the agent of the Government for the purpose of receiving processes against the Government or the said Secretary of State in Council, issuing out of the Court in which such person may be the pleader of Government.

**420.** If the suit be against the said Secretary of State in Council or against a public officer for any such act as aforesaid, the summons shall be served on the Government Pleader of the Court in which the suit is instituted, or on any other person appointed to receive process on behalf of the Government.

**421.** The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

The Court may also in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

**422.** If the defendant be a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it shall appear to the Court that the summons may be most conveniently so served.

**423.** If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference, and to receive orders thereon through the proper channel;

and the Court upon such application may extend the time for so long as appears to be requisite.

**424.** No suit shall be instituted under this chapter against the said Secretary of State in Council, or against the public officer until the expiration of two months next after notice in writing has been in the case of the Secretary of State in Council delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff.

Unless such notice is proved, the Court shall find for the defendant.

Every suit against a public officer for compensation for an act alleged to be done in his official capacity shall be commenced within six months next after the cause of action arises, and not afterwards.

**425.** If the Government undertake the defence of a suit under this chapter where Government undertakes against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

**426.** If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

**427.** If in a suit under this chapter against a public officer the Court requires the personal appearance of the defendant, and the defendant satisfies the Court that he cannot absent himself from his duty without detriment to the public service, the Court shall exempt him from appearing in person.

**428.** When the decree is against the said Secretary of State in Council or against a public officer, a time shall be specified in the decree within which it shall be satisfied; and if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Execution shall not issue on any decree mentioned in this section, unless it remains unsatisfied for the period of three months computed from the date of the report.

**429.** Where there is no Government Pleader the functions imposed by this chapter on the Government Pleader may be performed by such officer as the Local Government generally or specially appoints in this behalf.

## CHAPTER XXVIII.

### SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

**430.** Alien enemies residing in British India with the permission of the Governor-General in Council, and alien friends may sue in the Courts of British India as if they were subjects of Her Majesty.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

*Explanation.*—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without

a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of this section, be deemed to be an alien enemy.

**431.** A foreign State may sue in the Courts of British India, provided that—

(a) it has been recognized by Her Majesty or the Governor-General in Council, and

(b) the object of the suit is to enforce the private rights of the head, or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor-General in Council.

**432.** Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

**433.** Any such Prince or Chief and any ambassador or envoy of a foreign State may, with the consent of Government certified by the signature of one of its Secretaries (but not otherwise) be sued in any competent Court not subordinate to a District Court:

Such consent shall not be given unless—

(a) the Prince, Chief, ambassador or envoy has instituted a suit in such Court against the person desiring to sue him, or

(b) the Prince, Chief, ambassador or envoy by himself or another trades within the local limits of the jurisdiction of such Court, or

(c) the suit is for the determination of any right to, or interest in, immoveable property situate within the said local limits and in the possession of the Prince, Chief, ambassador or envoy.

No such Prince, Chief, ambassador or envoy shall be arrested under this Code; and no decree shall be executed against the property of any such Prince, Chiefs, ambassador or envoy unless with consent of Government certified as aforesaid.

**434.** The Governor-General in Council may from time to time, by notification in the *Gazette of India*,

(a) declare that the decrees of Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, may be executed in British India as if they had been made by the Courts of British India, and

(b) cancel any such declaration.

So long as such declaration remains in force the said decrees may be executed accordingly.

## CHAPTER XXIX.

### SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

**435.** In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaintiff may be subscribed and verified on behalf of the Corporation or Company by any director, secretary, or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

**436.** When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served

(a) by leaving it at the registered office (if any) of the Corporation or Company, or

(b) by sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(c) by giving it to any director, secretary, or other principal officer of the Corporation or Company,

and the Court may require the personal appearance of any director, secretary, or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

## CHAPTER XXX.

### SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

**437.** In all suits concerning property vested in a trustee, executor or administrator, the trustee, executor or administrator shall represent the persons beneficially interested in such property; and it shall not ordinarily be necessary to make such persons parties to the suit. But the Court may, if it think fit, order them or any of them to be made such parties.

**438.** When there are several executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

**439.** Unless the Court directs otherwise, the husband of a married administrator or executrix shall not be a party to a suit by or against her.

## CHAPTER XXXI.

### SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

**440.** Every suit by a minor shall be instituted in his name by an adult person, who in such suit shall be called the next friend.



of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

Costs.

441. Every application to the Court on behalf of a minor (other than an application under section 450) shall be made by his next friend, or his guardian for the suit.

Applications to be made by next friend or guardian *ad litem*.

442. If a plaint be filed by or on behalf of a minor, without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice in writing of such application shall be given to such person by the defendant; and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit.

Plaint filed without next friend to be taken off the file.

Costs.

443. Where the defendant to a suit, or respondent to an application, is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct and management of the case.

Guardian *ad litem* to be appointed by the Court.

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

444. Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might, reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Order obtained without next friend or guardian may be discharged.

Costs.

445. Any person, being *sui juris*, may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant or respondent in or to the suit or application.

Who may be next friend.

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant or respondent whose interest is adverse to that of such minor, as to make it unlikely that the interest of such minor will be properly protected by him, or if he does not do his duty, or, pending the suit or application, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of such minor or by a defendant or respondent for his removal, and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly and a guardian for the suit to be substituted.

Removal of next friend.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to

Retirement of next friend.

be put in his place, and giving security for the costs already incurred.

448. The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Application for appointment of new next friend.

449. On the death or removal, as aforesaid, of a next friend, further proceedings shall be stayed until the appointment of a next friend in his place.

Stay of proceedings on death or removal of next friend.

450. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Application for appointment of new next friend.

451. On the appointment of a new next friend his name as such shall thenceforth be inserted in the proceedings.

Name of new next friend to be inserted in proceedings.

452. Before the name of any person can be used as the next friend of a minor, he shall sign a written authority to the pleader for that purpose, which authority shall be filed in Court.

Written authority to act for next friend to be filed.

453. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age, must elect whether he will proceed with the suit or application.

Course to be followed by minor plaintiff or applicant on coming of age.

If he elects to proceed with it, he shall obtain an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus:—  
“A. B., late a minor by C. D., his next friend, but now of full age.”

If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, obtain an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

When minor sole plaintiff, or sole applicant.

Costs.

In either case the application may be made by petition *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

454. A minor co-plaintiff or co-applicant, on coming of age, and desiring to repudiate the suit or application, must apply to have his name struck out as co-plaintiff or co-applicant.

When minor co-plaintiff or co-applicant.

The application shall be by summons to the next friend, as well as to the defendant or respondent; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings therefore had in the suit or matter, shall be paid by such persons as the Court directs.

Costs.

455. If any minor on attaining majority can

When suit or proceeding unreasonable or improper.

prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff or sole applicant, apply to have the suit dismissed.

The application shall be by summons to all the parties concerned: and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application

Costs.

and of any thing done in the suit.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name of the minor. The

Petition for appointment of guardian *ad litem*.

petition must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit or application, adverse to that of the minor, and that he is a fit person to be so appointed.

457. A co-defendant or co-respondent, if *sui juris*, may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a party applicant, nor a married woman, can be so appointed.

Who may be guardian *ad litem*.

that of the minor; but neither a plaintiff, nor a party applicant, nor a married woman, can be so appointed.

458. If the guardian for the suit dies pending

On death of guardian, *pendente lite*, a new guardian to be appointed.

a suit or application against a minor, a new guardian shall be appointed in his place.

459. If the guardian for the suit of a minor defendant or respondent does not do his duty, or if other sufficient ground be made

Guardian neglecting his duty may be removed

to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned

Costs.

to any party by his breach of duty.

460. When the enforcement of a decree is ap-

When decree to be enforced against heir or representative.

plied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed, and the decree-holder shall serve on such guardian notice in writing of such application.

461. No sum of money or other thing shall

Before decree, next friend or guardian *ad litem* not to receive money without leave of Court and giving security.

be received or taken by a next friend or guardian for the suit at any time on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

462. No such next friend or guardian for the

Next friend or guardian *ad litem* not to compromise without leave of Court.

suit shall enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian without the leave of the Court.

Any such agreement or compromise entered into

Compromise without leave voidable.

without the leave of the Court shall be voidable against all parties other than the minor.

463. The provisions contained in sections 440

Application of sections 440 to 462 to persons of unsound mind.

to 462 (both inclusive), shall,

*mutatis mutandis*, apply in

the case of persons of un-

sound mind, adjudged to be

so under Act No. XXXV of 1858, or under any

other law for the time being in force.

464. Nothing in sections 442 to 462 applies

Wards of court.

to any minor or person of

unsound mind, for whose

person or property a guardian or manager has been appointed by the Court of Wards or by the Civil Court under any local law.

## CHAPTER XXXII.

### SUITS BY AND AGAINST MILITARY MEN.

465. When any officer or soldier actually

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

serving the Government in a

military capacity is a party

to a suit, and cannot obtain

leave of absence for the pur-

pose of prosecuting or defend-

ing the suit in person, he may authorize any

person to sue or defend in his stead.

The authority shall be in writing and shall be

signed by the officer or soldier in the presence of

(a) his commanding officer or of the next subor-

ordinate officer, if the party be himself the com-

manding officer, or (b) where the officer or soldier

is serving in military staff employment, the head

or other superior officer of the office in which he is

employed. Such commanding or other officer

shall countersign the authority which shall be

filed in Court.

When so filed, the countersignature shall be

sufficient proof that the authority was duly exe-

cuted, and that the officer or soldier by whom it

was granted could not obtain leave of absence

for the purpose of prosecuting or defending the

suit in person.

*Explanation.*—In this chapter the expression

'commanding officer' means the officer in actual

command for the time being of any regiment,

corps, detachment or depôt, to which the officer

or soldier belongs.

466. Any person authorized by an officer or

Person so authorized may act personally or appoint pleaders.

soldier to prosecute or defend

a suit in his stead may pro-

secute or defend it in person

in the same manner as the officer or soldier could

do if present; or he may appoint a pleader to pro-

secute or defend the suit on behalf of such officer

or soldier.

467. Processes served upon any person au-

Service on person so authorized, or on his pleader, to be good service.

thorized by an officer or

soldier, as in section 465, or

upon any pleader appointed

as aforesaid by such person

to act for, or on behalf of such officer or soldier,

shall be as effectual as if it had been served on

the party in person or on his pleader.

468. When an officer or soldier is a defendant,

the Court shall send a copy

of the summons to the com-

manding officer of such

officer or soldier for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom



it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

469. If, in the execution of a decree, a warrant of arrest is to be executed within the limits of a cantonment, garrison, military station, or military bazar, the officer charged with the execution of such warrant shall deliver the same to the commanding officer.

The commanding officer shall back the warrant with his signature, and shall cause the person named therein to be arrested if within the limits of his command, and delivered to the officer so charged of the warrant.

### CHAPTER XXXIII.

#### INTERPLEADER.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a mere stakeholder, and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself.

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

471. In every suit of interpleader the plaintiff must, in addition to the other statements necessary for plaints, state—

- (a) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;
- (b) the claims made by the defendants severally; and
- (c) that there is no collusion between the plaintiff and any of the defendants.

472. When the thing claimed is capable of being paid into Court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

473. At the first hearing the Court may

- (a) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit: or, if it thinks that justice or convenience so require,
- (b) retain all parties until the final disposal of the suit: and, if it finds that the admissions of the parties or other evidence enable it,
- (c) adjudicate the title to the thing claimed: or else it may

- (d) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court.

474. Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

#### Illustrations.

(a) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader suit against A and C.

(b) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader suit against A and C.

475. When the suit is properly instituted, the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

476. If any of the defendants in an interpleader suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed that a decree has been made in the interpleader suit in favour of the stakeholder, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader suit.

## PART IV.

### OF PROVISIONAL REMEDIES.

#### CHAPTER XXXIV.

##### OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

##### A.—Arrest before Judgment.

477. If at any stage of any suit, other than a suit for the possession of immoveable property, the plaintiff satisfies the Court by affidavit—

- that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,
- (a) has absconded or left the jurisdiction of the Court, or
- (b) is about to abscond or to leave the jurisdiction of the Court, or
- (c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

478. If the Court, after examining the application of the plaintiff, and making such further investigation as it thinks fit, is satisfied

that the defendant, with any such intent as aforesaid,

(a) has absconded or left the jurisdiction of the Court, or

(b) is about to abscond or to leave the jurisdiction of the Court, or

(c) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue an order for bringing the defendant before the Court to show cause why he should not give security for his appearance.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim

against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

481. If the defendant fail to comply with an order under section 479 or section 480, the Court may commit him to jail until the decision of the Court, or, if judgment be given against the defendant, until the execution of the decree; Provided that no person shall be imprisoned under this section for a longer period than six months.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

### B.—Attachment before Judgment.

483. If at any stage of any suit the plaintiff satisfies the Court by affidavit that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(a) is about to dispose of the whole or any part of his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(b) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit, and, on his failing to give such security, to direct that any portion of his property shall be attached until the further order of the Court.

The application shall, unless the Court otherwise directs, contain a specification of the property required to be attached, and the estimated value thereof.

484. If the Court, after examining the application of the plaintiff, and making any further investigation which it thinks fit, is satisfied that

the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him, in the suit, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also in the order direct the conditional attachment of the whole or any portion of the property specified in the application.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required within

the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been ordered to be attached, the Court shall order the attachment to be withdrawn.

486. The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money.

487. If any claim be preferred to the property attached before judgment, such claims shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.



**488.** When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment, whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

**489.** Attachment before judgment shall not affect the rights of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

**490.** Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to reattach the property in execution of such decree.

*C.—Compensation for improper Arrests or Attachments.*

**491.** If in any suit in which an arrest or attachment has been effected it appear to the Court that such arrest or attachment was applied for on insufficient grounds,

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury occasioned to him by the arrest or attachment:

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

**CHAPTER XXXV.**

**OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.**

*A.—Temporary Injunctions.*

**492.** If in any suit it be proved by affidavit or otherwise

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit.

**493.** In any suit for restraining the defendant from committing a breach of contract or other injury, and whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from the repetition or the continuance of the breach of contract or wrongful act complained of, or the committing of any breach of contract or injury of a like kind arising out of the same contract or relating to the same property or right.

Such injunction may be granted by the Court on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit.

In case of disobedience, an injunction granted under this section or section 491 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit and may pay the balance, if any, to the defendant.

**494.** The Court may in all cases, and shall in all cases except where it appears to the Court that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice in writing of the application for the same to be given to the opposite party.

**495.** An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

**496.** Any order for an injunction may be discharged or varied or set aside by the Court, on application made thereto by any party dissatisfied with such order.

**497.** If it appears to the Court that the injunction was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury occasioned to him by the issue of the injunction:

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

*B.—Interlocutory Orders.*

**498.** The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property being the subject of such suit, which is subject to speedy and natural decay.

Power to order interim sale of perishable articles.

**499.** The Court may, on the application of any party to a suit, and on such terms as it thinks fit,

(a) make an order for the detention, preservation or inspection, of any property being the subject of such suit;

(b) for all or any of the purposes aforesaid, authorize any person to enter upon, or into any land or building in the possession of any other party to such suit, and

(c) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

**500.** An application by the plaintiff for an order under section 498 or section 499 may be made, after notice in writing to the defendant at any time after service of the summons.

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

**501.** When land paying revenue to Government, or a tenure liable to sale, forms the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

**502.** When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in Court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

Deposit of money, &c., in Court.

## CHAPTER XXXVI.

## APPOINTMENT OF RECEIVERS AND DEPOSIT IN COURT.

**503.** Whenever it appears to the Court to be necessary for the preservation or the better custody or management of any property, moveable or immoveable, the subject of a suit, or under attachment, the Court may

(a) appoint a Receiver of such property, and may, if need be,

(b) remove the person in whose possession or custody the property may be from the possession or custody thereof;

(c) commit the same to the custody or management of such Receiver; and

(d) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Every Receiver so appointed shall

(e) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property,

(f) pass his accounts at such periods and in such form as the Court directs,

(g) pay the balance due from him thereon as the Court directs, and

(h) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

**504.** If the property be land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be Receiver of such property.

**505.** The powers conferred by this chapter shall be exercised only by High Courts and District Courts. But whenever the Judge of a Court subordinate to a District Court considers it expedient to appoint a Receiver in any suit before him, he shall refer the case to the District Court with his opinion to that effect, and the District Court shall make such order thereon as it thinks fit.

PART V.  
OF SPECIAL PROCEEDINGS.

## CHAPTER XXXVII.

## REFERENCE TO ARBITRATION.

**506.** If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply,

Parties to suit may apply for order of reference.



in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred.

**507.** The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

**508.** The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except in the case provided for by section 512, or unless, owing to the death, refusal, neglect, incapacity or departure from India of the arbitrator, the reference be fruitless, in which case the Court may issue an order superseding the arbitration and restoring the suit to the file of the Court.

**509.** If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

- (a) by the appointment of an umpire, or
- (b) by declaring that the decision shall be with the majority if the major part of the arbitrators agree, or
- (c) by empowering the arbitrators to appoint an umpire, or
- (d) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

**510.** If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects, or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court, if any of the parties so desire, may appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India.

**511.** Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

**512.** Every arbitrator or umpire appointed under sections 509, 510 or 511 shall have the like powers as if his name had been inserted in the order of reference.

**513.** The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire to examine, as the Court may issue in suits tried before it.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

**514.** If from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it think fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

**515.** When an umpire has been appointed, he may enter on the reference in the place of the arbitrators.

(a) if they have allowed the appointed time to expire without making an award, or

(b) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

**516.** When an award in a suit has been made, the persons who made it shall sign it and file it in Court, together with any depositions and documents which have been taken and proved before them; and notice of the filing of the award shall be given to the parties.

**517.** Upon any reference by an order of Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to and form part of the award.

**518.** On the application of either of the parties the Court may, by order, modify or correct an award, (a) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or

(b) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

**519.** The Court may also, on the application of any of the parties or of the persons making the award, make such order as it thinks fit respecting

the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

520. In any of the following cases the Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit, that is to say:—

(a) if the award has left undetermined any of the matters referred to arbitration, or if it determined any matter not referred to arbitration;

(b) if the award is so indefinite as to be incapable of execution;

(c) if an objection to the legality of the award is apparent upon the face of it.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely)—

(a) corruption or misconduct of the arbitrator or umpire;

(b) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(c) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case:

Upon the judgement so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree.

523. When any persons by an instrument in writing agree that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any Court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in such Court.

The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the

application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

On such application being made, the Court shall direct notice thereof to be given to any of the parties to the agreement other than the applicants, requiring such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator when he is not named therein and the parties cannot agree as to the nomination.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the whole matter to which the award relates, that the award be filed in Court.

The application shall be in writing, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

The Court shall direct notice to be given to the parties to the arbitration other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

526. If no sufficient cause be shown against the award, the Court may order it to be filed, and such award may then be enforced as a decree upon an award made under the provisions of this chapter.

## CHAPTER XXXVIII.

### OF PROCEEDINGS ON AGREEMENT OF PARTIES.

527. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing, stating such question in the form of a case for the opinion of the Court; and providing

(a) that upon the finding of the Court in the affirmative or negative of such question, a sum of money fixed by the parties or to be determined by the Court shall be paid by one of the parties to the other of them; or

(b) that some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or



(c) that one or more of the parties shall do or perform, or refrain from doing or performing, some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby.

528. If the agreement is for the delivery of

When value of subject-matter must be stated.

any property, or for the doing or performing, or the refraining from doing or performing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

529. The agreement, if framed in accordance

Agreement to be filed and numbered as a suit.

with the rules hereinbefore contained, may be filed in the Court of the lowest grade having jurisdiction in the matter to which it relates, and, when so filed, shall be numbered and registered as a suit between one or more of the parties interested, or claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement other than the party or parties by whom it was presented.

530. When the agreement has been filed, the

Parties to be subject to Court's jurisdiction.

parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

531. The case shall be set down for hearing

Hearing and disposal of the case.

as a suit instituted under chapter V, the provisions of which shall apply to such suit so far as the same are applicable.

If the Court is satisfied, after an examination of the parties, or taking such evidence as it thinks fit,

(a) that the agreement was duly executed by them, and

(b) that they have a *bona fide* interest in the question of fact or law stated therein, and

(c) that the same is fit to be decided, it shall proceed to deliver judgement thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow, and shall be enforced in the manner provided in this Code for the execution of decrees.

## CHAPTER XXXIX.

### OF SUMMARY PROCEDURE ON NEGOTIABLE INSTRUMENTS.

532. In any Court to which this section applies

Institution of summary suits upon bills of exchange, &c.

all suits upon bills of exchange, hundis or promissory notes, may in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 168, or in such other form as the High Court may from time to time prescribe.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear to or defend the suit unless he obtains leave from a judge as hereinafter mentioned so to appear and defend;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for cost to be fixed by a rule of the High Court, unless the plaintiff claim more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

The defendant shall not be required to pay into

Payment into Court of sum mentioned in summons.

the Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *prima facie* sustainable, or feels reasonable doubt as to its good faith.

*Explanation.*—This section is not confined to cases in which the bill, hundi or note sued upon, together with mere lapse of time, is sufficient to establish a *prima facie* right to recover.

533. The Court shall, upon application

Defendant showing defence on merits to have leave to appear.

within the period of seven days from the service of such summons, give leave to appear and to defend the suit, upon the defendant paying into Court the sum mentioned in the summons or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

534. After decree, the Court may, under

Power to set aside decree.

special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

535. In any proceeding under this chapter

Power to order bill to be deposited with officer of Court.

the Court may order the bill, hundi, or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

536. The holder of every dishonoured bill of

Recovery of cost of noting non-acceptance of dishonoured bill.

exchange or promissory note shall have the same remedies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

537. Except as provided by sections 532 to

Procedure in suits under this chapter.

536, both inclusive, the procedure in suits under this chapter shall be the same as the procedure in suits instituted under Chapter V.

Power to extend this chapter. 538. Sections 532 to 537 (both inclusive) apply only to—

(a) High Courts established under Royal Charter;

(b) the Chief Court of the Punjab;

(c) The Court of the Recorder of Rangoon;

(d) the Courts of Small Causes in the Presidency Towns;

(e) the Court of the Judge of Karachi; and

(f) any other Court to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may from time to time alter or cancel any such notification.

## PART VI. OF APPEALS.

### CHAPTER XL.

#### OF APPEALS FROM ORIGINAL DECREES.

539. Unless when otherwise expressly provided in this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

540. The appeal shall be made in the form of a memorandum in writing presented by the appellant or his pleader, and shall be accompanied by a copy of the decree appealed against and of the judgment on which it is founded.

541. The memorandum of appeal shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative, and such grounds shall be numbered consecutively.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant: Provided that the Court shall not rest its decision on any ground set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, such memorandum or grounds may be rejected or returned to the appellant for the purpose of being amended within a time to be fixed by the Court, or be amended then and there.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

544. If there be more plaintiffs or more defendants than one in a suit, and the decree appealed against proceed on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and the Appellate Court may reverse or modify the decree in favour of all the plaintiffs or defendants as the case may be.

#### Illustrations.

(a) A sues B and C on a promissory note. The defendants plead payment. The Court decrees in favour of A. B alone appeals. The Appellate Court, holding that payment has been made, may reverse the decree in favour of both B and C.

(b) A sues B and C on a promissory note. B pleads payment and C pleads the Limitation Act. The Court overrules both pleas and decrees in favour of A. B alone appeals. The Appellate Court may be of opinion that payment has been made, but cannot, on B's appeal, reverse the decree as regards C.

#### Of staying and executing Decrees under Appeal.

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may for sufficient cause order the execution to be stayed.

If an application be made for the execution of a decree which is open to appeal, before the time allowed for appeal has expired, the Court may for sufficient cause order the execution to be stayed.

Provided that no order shall be made under this section unless the Court is satisfied—

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

546. If an order is made for the execution of a decree against which an appeal has been preferred, the Court which passed the decree may, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in



execution of the decree, or of the value of such property, and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

547. No such security as is mentioned in

No such security to be required from Government or public officers.

sections 545 and 546 shall be required from the Secretary of State for India in Council or from any public officer sued in respect of an act alleged to be done by him in his official capacity.

*Of Procedure in Appeal from Decrees.*

548. When a memorandum of appeal is ad-

Registry of memorandum of appeal.

mitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of admission, and shall register the appeal in a book to be kept for the purpose.

Register of appeals.

Such book shall be called the Register of Appeals.

549. The Appellate Court may, at its discre-

Appellate Court may require appellant to give security for costs.

tion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs either of the appeal, or of the original suit, or of both:

Provided that the Court shall demand such

When appellant resides out of British India.

security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property to which the appeal relates.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

550. When the memorandum of appeal is re-

Appellate Court to give notice to Court whose decree is appealed against.

gistered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

If the appeal be from a Court, the records of

Transmission of papers to Appellate Court.

which are not deposited in the Appellate Court, the Court to which such notice is sent shall, upon the receipt thereof, transmit with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court:

Provided that the Appellate Court may, if it

Power to confirm decision of lower Court without sending it notice.

thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.

551. Either party may make an application in

Copies of exhibits in Court whose decree is appealed against.

writing to the Court against whose decree the appeal is made, specifying any papers

of which he requires copies to be made and deposited in such Court; and copies of such papers shall be prepared at the expense of the applicant, and shall be deposited accordingly.

552. The Appellate Court

Day for hearing appeal.

shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent a sufficient time to enable him to appear and answer the appeal on such day.

553. Notice of the day so fixed shall be stuck

Publication and service of notice of day for hearing appeal.

up in the appellate court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or his pleader in the manner provided in chapter VI for the service of a summons to a defendant to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Instead of sending the notice to the Court

Appellate Court may itself cause notice to be served.

against whose decree the appeal is made, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the rules above referred to.

554. The notice to the respondent shall declare

Contents of notice.

that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte*.

*Procedure on Hearing.*

555. On the day so fixed, or on any other day

Right to begin.

to which the hearing may be adjourned, the party having the right to begin shall be heard in support of or against the appeal, as the case may be. The other party shall then be heard, and the party having the right to begin shall then be entitled to reply.

*Explanation.*—If the appeal is from the whole decree, or if there are cross-appeals, the party having the right to begin is the party who had the right to begin on the hearing in the Court whose decree is appealed from.

If the appeal is from only a portion of the decree, and there is no cross-appeal, the appellant has the right to begin.

556. If on the day so fixed, or any other day

Dismissal of appeal for appellant's default.

to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default.

If the appellant attends and the respondent does

Hearing appeal *ex parte*.

not attend, the appeal shall be heard *ex parte* in his absence.

557. If on the day so fixed, or any other day

Dismissal of appeal where notice has not been served in consequence of appellant's failure to deposit cost of notice.

to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the

Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed :

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent.

**558.** If an appeal be dismissed under section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing, or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

**559.** If it appear to the Court at the hearing that any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

**560.** When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may, within thirty days of the date of the decree, apply to the Appellate Court to re-hear the appeal; and if it be proved that the respondent was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

**561.** Any respondent, though he may not have appealed against any part of the decree, may upon the hearing take any objection to the decree which he could have taken by way of appeal, provided he has given through the Court to the appellant seven days' notice of such objection.

Such notice shall be in the form of a memorandum, and the provisions of sections 540, 541 and 542, so far as they relate to the form and contents of the memorandum of appeal, shall apply to such notice.

A respondent cannot by such notice raise questions between himself and any party to the suit, other than the appellant.

**562.** If without going into the merits, the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, remand the case, together with a copy of the decree or order

in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register, and

- (a) to proceed to investigate the suit on the merits, and pass a decree thereon; or
- (b) to try a particular issue; or
- (c) to take certain specified evidence.

**563.** When a case is remanded with directions to take such evidence, the Court to which the case is remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken.

**564.** The Appellate Court shall not remand a case for a second decision, except as provided in section 562.

**565.** When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, if necessary, re-settle the issues, and shall finally determine the case notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

**566.** If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required,

and such Court shall proceed to try such issue, and shall return to the Appellate Court its finding thereon together with the evidence.

**567.** Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

**568.** The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(a) the Court against whose decree the appeal is made refused to admit evidence which ought to have been admitted, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause,



the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the reason for the admission shall be recorded on the proceedings of the Court.

**569.** Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other Subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

**570.** In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

*Of the Judgment in Appeal.*

**571.** The Appellate Court, after hearing the parties or their pleaders, and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which a reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

**572.** The judgment shall be written in English; provided that, if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

**573.** When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge, or such officer as he appoints in this behalf.

**574.** The judgment of the Appellate Court shall state—  
(a) the points for determination;  
(b) the decision thereupon;  
(c) the reasons for the decision; and  
(d) when the decree appealed against is reversed, the relief to which the appellant is entitled,

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

**575.** When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that, if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may from time to time make rules consistent with this Code to regulate references under this section.

**576.** When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

**577.** The judgment may be for confirming, varying, or reversing the decree of the Court against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

**578.** No decree shall be varied or reversed, nor shall any case be remanded in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

*Of the Decree in Appeal.*

**579.** The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it:

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

**580.** Certified copies of the judgment and decree shall be furnished to the parties on application to the Court and at their expense.

**581.** A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree

appealed against, and shall be filed with original proceedings in the suit, and an entry of the judgment of the Appellate Court shall be made in the register of Civil suit.

**582.** The Appellate Court shall have the same powers in appeals under this chapter in respect to adjournments, granting of time, arrest or attachment before judgment, issue of injunctions, examination of the parties or their pleaders and of witnesses or other persons, issue of commissions, award of interest or mesne profits, separation of misjoined suits, permission to bring fresh suits, or otherwise, as are vested by this Code in Courts of original jurisdiction in respect of suits instituted under chapter V.

The provisions of such chapter, unless when otherwise provided, shall apply to appeals under this chapter so far as the same are applicable.

**583.** When a party in whose favour a decree is passed in an appeal under this chapter is desirous of obtaining execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal according to the rules hereinbefore prescribed for the execution of decrees in suits.

#### CHAPTER XLI.

##### OF APPEALS FROM APPELLATE DECREES.

**584.** Unless when otherwise provided in this Code or by any other law, from all decrees passed in appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds, (namely)—

- (a) the decision being contrary to some specified law or usage having the force of law;
- (b) the decision having failed to determine some issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may have produced error or defect in the decision of the case upon the merits.

**585.** No second appeal shall lie except on the grounds mentioned in section 584.

**586.** No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the debt, compensation, or demand for which the original suit is instituted, does not exceed the sum of five hundred rupees.

**587.** Every memorandum of appeal under this chapter shall be accompanied by a copy of the decree appealed against,

and the provisions contained in chapter XLII shall apply as far as may be to appeals under this chapter,

and the decree made by the Appellate Court shall be executed by the Court which made the decree in the suit in which such appeal was preferred, under the rules hereinbefore provided for the execution of decrees in suits.

#### CHAPTER XLII.

##### OF APPEALS FROM ORDERS.

**588.** An appeal shall lie from the following orders under this Code and from no other such orders:—

- (a) orders under section 19, staying proceedings in a suit,
- (b) orders under section 24, determining whether immoveable property is or is not within the local limits of the Court's jurisdiction,
- (c) orders under section 32, striking out or adding the name of any person as plaintiff or defendant,
- (d) orders under section 44, adding a cause of action,
- (e) orders under section 47, excluding a cause of action,
- (f) orders rejecting or returning plaints under section 53, clause (d), or section 54, clauses (b) and (d), or section 57, clause (c),
- (g) orders rejecting applications under section 102, in cases open to appeal for an order to set aside the dismissal of a suit,
- (h) orders under section 120, where a party fails to appear,
- (i) orders under section 168, for attachment of property,
- (j) orders under section 176, where a party refuses to give evidence or produce a document called for by the Court,
- (k) orders under section 244, as to questions relating to the execution of decrees,
- (l) orders under section 261, as to objections to draft conveyances or draft endorsements,
- (m) orders under section 312, for setting aside, or under section 314, for confirming, a sale,
- (n) orders in insolvency matters, under section 351, 352, 357, or 359,
- (o) orders rejecting applications under section 370, for dismissal of the suit,
- (p) orders disallowing objections, under section 372,
- (q) orders as to interpleader suits, under section 473, 475, or 476,
- (r) orders under section 479, 480, 481, 485, 492, 493, 503, or 513,
- (s) orders under section 518, modifying an award,
- (t) orders under any of the provisions of this Code, imposing fines, or for the imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

**589.** An appeal from any order specified in section 588, clause (n), shall lie to the High Court.

Court which shall hear appeals.



When an appeal from any other order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made.

**590.** The procedure prescribed in chapter XLII shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

**591.** Except as provided in this chapter, no appeal shall lie from any order passed in the course of a suit and relating thereto, prior to decree; but if the decree be appealed against, any error, defect or irregularity in such order, affecting the merits of the case or the jurisdiction of the Court, may be set forth as a ground of objection in the memorandum of appeal.

### CHAPTER XLIII.

#### OF PAUPER APPEALS.

**592.** Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in chapters XXVI, XL, XLI and XLII, in so far as those rules are applicable.

Provided that the Court shall reject the application unless upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

**593.** The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further enquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such enquiry.

### CHAPTER XLIV.

#### OF APPEALS TO THE QUEEN IN COUNCIL.

**594.** In this chapter, unless there be something repugnant in the subject or context, the expression 'decree' includes also judgment and order.

**595.** Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained—

an appeal shall lie to Her Majesty in Council

(a) from any final decree passed on appeal by a High Court or other Court of final appellate jurisdiction,

(b) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(c) from any decree, when the case, as herein-after provided, is certified to be a fit one for appeal to Her Majesty in Council.

**596.** In each of the cases mentioned in clauses (a) and (b) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

**597.** Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, whenever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

**598.** Whoever desires to appeal under this chapter to Her Majesty in Council, must apply by petition to the Court whose decree is complained of.

**599.** Such application must ordinarily be made within six months from the date of such decree. But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

**600.** Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

**601.** If such certificate be refused, the petition shall be dismissed:

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, within thirty days from the date of the order, to the High Court to which the former Court is subordinate.

**602.** If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,

(a) give security for the costs of the respondent, and

(b) deposit the amount required to defray the expense of translating, transcribing, indexing, and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

(4) such other documents as the High Court may direct to be excluded:

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

**603.** When such security has been completed and deposit made to the satisfaction of the Court, the Court may

(a) declare the appeal admitted, and

(b) give notice thereof to the respondent, and shall then

(c) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and

(d) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

**604.** At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

**605.** If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing, or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient security, or to make, within like time the required payment.

Effect of failure to comply with order.

**606.** If the appellant fail to comply with such order, the proceedings shall be stayed, and the appeal shall not proceed without an order in this behalf of Her Majesty in Council, and in the meantime execution of the decree appealed against shall not be stayed.

**607.** When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 602.

**608.** Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs.

But the Court may, if it think fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court—

(a) impound any moveable property in dispute, or any part thereof, or

(b) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(c) stay the execution of the decree appealed against taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(d) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal as it thinks fit.

**609.** If at any time during the pendency of the appeal, the security so furnished by either party appears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

**610.** Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council, shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court

Procedure to enforce orders of Queen in Council.



from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

When any monies expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial transactions between the Imperial and the Indian Governments.

**611.** The orders made by the Court which enforce or executes the order of Her Majesty in Council relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

**612.** The first column of No. 169 of the second schedule annexed to the Indian Limitation Act, 1871, shall be read as if the following words were added thereto (that is to say): "or any order of Her Majesty in Council."

**613.** The High Court may, from time to time, make general rules consistent with this Act to regulate—

- (a) the service of notices under section 600,
  - (b) the grant or refusal of certificates under sections 601 and 602 by Courts of final appellate jurisdiction subordinate to the High Court,
  - (c) the amount and nature of the security required under sections 602, 605 and 609,
  - (d) the testing of such security,
  - (e) the estimate of the cost of transcribing the record,
  - (f) the preparation, examination and certifying of such transcript,
  - (g) the revision and authentication of translations,
  - (h) the preparation of indices to transcripts of records, and of lists of the papers not included therein,
  - (i) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council,
- and all other matters connected with the enforcement of this chapter.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court, and the Courts of final appellate jurisdiction subordinate thereto.

All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council and in force immediately before the passing of this Act, shall, so far as they are consistent with this Act, be deemed to have been made and published hereunder.

**614.** In sections 595 and 613, the expression 'High Court' shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

**615.** The rules and restrictions referred to in Bengal Regulation III of 1828, section IV, clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

**616.** Nothing herein contained shall be understood—

(a) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

(b) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, nor to appeals from orders and decrees of Prize Courts.

## PART VII.

### CHAPTER XLV.

#### OF REFERENCE TO THE HIGH COURT.

**617.** If before or in the hearing of a suit or appeal in which the decree is final, or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document which construction may affect the merits, arises, on which the Court trying the suit or appeal entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the point on which doubt is entertained, and refer such statement with its own opinion for the decision of the High Court.

**618.** The Court may either stay the proceedings or proceed in the suit or appeal notwithstanding such reference, and may pass a decree contingent upon the opinion of the High Court on the point referred;

but no execution shall be issued in any case in which such reference is made to the High Court until the receipt of the order of that Court.

If a decree has been made its execution shall be stayed until the receipt of a copy of the judgment of the High Court upon such reference.

**619.** The High Court shall hear the parties to the suit or appeal in which the reference is made, in person or by their respective pleaders, and shall determine the point so referred to it, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made, and such Court shall, on the receipt thereof, proceed to dispose of the suit or appeal in conformity with the decision of the High Court.

**620.** Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the suit or appeal.

**621.** When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree which the Court making the reference has passed in the suit or appeal out of which the reference arose, and make such order as it thinks fit.

## PART VIII.

### CHAPTER XLVI.

#### OF REVIEW OF JUDGMENT.

**622.** The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have passed any order contrary to law, and may set aside the decision, or pass such other order in the case as the High Court thinks fit.

The District Court may exercise the like powers as to any case decided by any Court subordinate thereto.

**623.** Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is hereby allowed; or

(c) by a judgment on a reference from a Court of Small Causes;

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be adduced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant.

**624.** Except on the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

**625.** The rules hereinbefore contained as to the form of applications for making appeals shall apply, *mutatis mutandis*, to applications for review.

**626.** If it appear to the Court that there is not sufficient ground for a review, it shall reject the application.

If the Court be of opinion that the review shall be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion:

Provido.

Provided that—

(a) no such review shall be granted without previous notice to the opposite party to enable him to appear, and he heard in support of the decree a review of which is applied for; and

(b) no such review shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed, without strict proof of such allegation.

**627.** If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continue attached to the Court at the time when the application for a review is presented and are not, or is not, precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.

**628.** If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected.

If there be a majority the decision shall be according to the opinion of the majority.

**629.** The order of the Court whether for granting the review or rejecting the application shall be final, except where the review has been granted without jurisdiction, in which case an appeal shall lie.

Where the application has been rejected in consequence of the failure of the parties to appear, the applicant may, within fifteen days from such rejection, apply for an order to have the rejected application restored to the file, and if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.



No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

**630.** When an application for a review is

Registry of application granted, and order for re-hearing.

granted a note thereof shall be made in the register, and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

## PART IX.

### CHAPTER XLVII.

#### SPECIAL RULES RELATING TO THE HIGH COURTS.

**631.** This chapter applies only to High Courts

This part to apply only to certain High Courts.

which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

Except as provided in this part, the provisions

Application of Code to High Courts.

of this Code apply to such High Courts.

**632.** Suits may be tried and determined by the

Ordinary original civil jurisdiction of the High Court.

High Court in the exercise of its ordinary original civil jurisdiction, if,

(a) in the case of suits for immoveable property, the property or any part thereof is situate, or,

(b) in all other cases, the cause of action, or any material part of the cause of action, has arisen, or the defendant or any of the defendants at the time of the commencement of the suit dwells, or carries on business, or personally works for gain, within the local limits of such jurisdiction:

Provided that the leave of the Court be first obtained,

(c) in the case of suits for immoveable property where only part thereof is situate within such limits, and

(d) in other cases where only part of the cause of action has arisen, or only some of the defendants at the commencement of the suit dwell, or carry on business, or personally work for gain within such limits:

Provided also that no High Court shall, in the exercise of its ordinary original civil jurisdiction, try any case in which the debt, or compensation, or value of the property sued for, does not exceed five hundred rupees, and which falls within the jurisdiction of a Small Cause Court situate within the local limits of such jurisdiction.

**633.** The High Court shall take evidence, and

High Court to record judgments according to its own rules.

record judgments and orders in such manner as it by rule from time to time directs.

**634.** Whenever a High Court considers it

Power to order execution of decree before ascertainment of costs, and execution for costs subsequently.

necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs

incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

**635.** No attorney shall, under the provisions of

Attorneys not to address Court.

this Code, be entitled to address the Court or examine witnesses.

**636.** Notices to produce documents, summonses

Process of High Courts may be served by attorneys in suits.

to witnesses, and every other judicial process, issued in the

exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except writs of summons to defendants issued under section 65, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order from time to time directs.

**637.** Any act not of a judicial nature which

Non-judicial acts may be done by Registrar.

this Code requires to be done by a Judge, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to perform such act.

The High Court may from time to time by rule declare what shall be deemed to be acts not of a judicial nature within the meaning of this section.

**638.** The procedure in civil cases brought before

Procedure in Admiralty cases.

the High Court in the exercise of its Admiralty or Vice-Admiralty jurisdiction shall be regulated, so far as the circumstances of the case will permit, by the rules prescribed in this Code.

In the following cases in the exercise of such jurisdiction, (namely)—

(a) cases in which a ship, or a ship and cargo have been or are to be proceeded against or arrested,

(b) cases in which goods only have been or are to be proceeded against or arrested, either for the purpose of proceeding against the goods or the freight due thereon,

(c) cases in which property has been or is arrested, and no party has appeared or appears at the return of the warrant, and

(d) all other cases in the exercise of Admiralty or Vice-Admiralty jurisdiction in which the rules contained in this Code are not applicable,

the practice and procedure shall be regulated as nearly as possible by the rules and regulations made and ordained by his late Majesty King William the Fourth in Council in pursuance of the Second of William the Fourth, chapter 51, and touching the practice to be observed in the several Courts of Vice-Admiralty in the colonies, except so far as such rules may be inconsistent with the twenty-fourth and twenty-fifth of Victoria, chapter 104, or with the Letters Patent granted in pursuance thereof.

**639.** In suits for mariners' wages brought before the High Court in the exercise of Admiralty or Vice-Admiralty jurisdiction, any number of mariners belonging to the same ship or serving under the same owner may proceed jointly in one suit.

**640.** The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 37, 54 clause (a), 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 206, 261, 403, 404, 405,

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Nothing in this Code shall extend or apply to any High Court in the exercise of its jurisdiction as an Insolvent Court.

**641.** The High Court shall have power to frame forms for every proceeding in such Court, for which the High Court thinks it necessary that forms should be provided, and for keeping all books, entries and accounts to be kept by its officers.

## PART X.

### CHAPTER XLVIII.

#### MISCELLANEOUS.

##### *Exemption from Personal Appearance.*

**642.** Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

**643.** The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

The names and residences of the persons so exempted shall from time to time be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission.

##### *Exemption from Arrest.*

**644.** No Judge, Magistrate or other judicial officer shall be liable to arrest under this Code while going to, presiding in, or returning from his Court.

And, except as hereinafter provided, the parties to a suit and their pleaders and recognized agents shall be exempt from arrest under this Code while going to, or attending a Civil Court for the purpose of such suit and while returning from such Court. Witnesses acting in obedience to a summons shall be similarly exempt.

##### *Offences in Court.*

**645.** When in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, 196, 199, 200, 205, 206, 207, 208, 209, 210, 463, 471, 474, 475, 476 or 477 of the Indian Penal Code, which may be made in respect to any document offered in evidence in the case, the Court may send the person accused in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and shall bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.

##### *Forms.*

**646.** Subject to the power conferred on the High Court by section 640 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

##### *Language of Courts.*

**647.** The language which, when this Code comes into force, is the language of any Court, subordinate to a High Court, shall continue to be the language of such Court until the Local Government otherwise orders; but it shall be lawful for the Local Government from time to time to declare what language shall be the language of every such Court.

##### *Statement of Cases by Registrars of Small Cause Courts.*

**648.** Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage having the force of law, or as to the construction of a document which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.



*Miscellaneous Proceedings.*

649. The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court, other than suits and appeals.

The High Court may from time to time make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

*Civil Process for Attachment, Sale, or Payment.*

650. If any property to be attached under this Code is situate without the local limits of the jurisdiction of the Court making the order of attachment, such Court, if a District Court, shall send to the District Court within the local limits of whose jurisdiction such property is situate, a copy of the order together with the probable amount of the costs of the attachment.

Such District Court shall, on receipt of such copy and amount, cause the attachment to be made as if the original order of attachment had been made by itself, and inform the Court by which such order was made or transmitted of the making of the attachment.

If the Court making the order of attachment is subordinate to a District Court, it shall send such copy to the District Court to which it is subordinate, and such Court shall, if it think fit, deal with the order as if it had been made by itself.

651. The rules contained in chapter XIX shall be applicable to the execution of any judicial process for the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

*Witnesses.*

652. The provisions of Chapters XIV and XV relating to witnesses shall apply to all persons required to give evidence, or to produce documents in any proceeding under this Code.

*Escape from Custody.*

653. Whoever offers any resistance or illegal obstruction to the lawful apprehension of himself under this Code, or under the warrant of any Court of civil judicature, or escapes or attempts to escape from any custody in which he is lawfully detained under this Code or under such warrant, shall be punished with imprisonment for a term which may extend to six months or with fine not exceeding one thousand rupees or with both.

*Subsidiary Rules.*

654. The High Court may from time to time make rules consistent with this Code to regulate any matter connected with the procedure of the Courts of Civil Judicature. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

## THE FIRST SCHEDULE.

(See Section 3.)

## A.—STATUTE REPEALED.

Year and chapter.	Title.	Extent of repeal.
29 Char. II, chap. 7 ...	An Act for the better observance of the Lord's day, commonly called Sunday.	The whole.

## B.—ACTS REPEALED.

Number and date.	Subject or Title.	Extent of repeal.
IX of 1840 ...	For amending the law administered in Her Majesty's Courts of Justice with reference to Arbitrations, Damages, and interested Witnesses.	So much as has not been repealed.
XXIII of 1840 ...	For executing within the local limits of the jurisdiction of Her Majesty's Courts Legal Process issued by authorities in the Mofussil.	So far as it relates to the execution of the process of Civil Courts.
VIII of 1841 ...	Interpleader ...	The whole.
XXVI of 1841 ...	Extending 3 & 4 Wm. IV., c. 42 ...	So much as has not been repealed.
XIV of 1848 ...	Commissions for taking affidavits ...	The whole.
XVII of 1852 ...	Special cases ...	The whole.

Number and year.	Subject or Title.	Extent of repeal.
XXXIII of 1852 ...	Enforcement of judgments ...	The whole Act, except so far as it relates to the decrees of Military Courts of Requests.
VI of 1855 ...	Writs of execution ...	The whole.
XXXIV of 1855 ...	Execution of judgments ...	The whole.
VIII of 1859 ...	For simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter.	The whole Act, except sections 15 and 192.
XXIII of 1861 ...	To amend Act VIII of 1859 ...	So much as has not been repealed.
XX of 1862 ...	To provide for the levy of Fees and Stamp Duties in the High Court, &c.	So much as has not been repealed.
XXIV of 1862 ...	To continue in force Act XX of 1862 ...	So much as has not been repealed.
IX of 1863 ...	To amend the Code of Civil Procedure ...	The whole.
XVIII of 1863 ...	To make provision for the speedy and efficient disposal of the business, &c.	So much as has not been repealed.
XXXII of 1863 ...	To continue in force Act XX of 1862 ...	So much as has not been repealed.
XI of 1865 ...	Mofussil Small Cause Courts' Act ...	Sections 8, 9, 10, 11, para. 2, 22, 23, 24, 25, 26, 27, 28, 42 and 47, and in section 32 the words "contained in the twenty-second, twenty-third, twenty-fourth and twenty-fifth sections of this Act."
XIV of 1865 ...	Central Provinces Courts' Act ...	Sections 17 and 18.
XIX of 1865 ...	Panjab Courts' Act ...	Sections 13 and 17.
V of 1866 ...	To provide a summary procedure on Bills of Exchange, &c.	In the title, the words 'to provide a summary procedure on Bills of Exchange, and.' The preamble down to and including the words 'Notes; and.' In section 1 the definitions of 'High Court' and 'Local Government.' Sections two to eight (both inclusive). Section 14.
XXIV of 1866 ...	High Court, North-Western Provinces ...	So much as has not been repealed.
X of 1867 ...	References by Mofussil Small Cause Courts.	The whole.
XXVI of 1867 ...	To amend the law relating to Stamp Duties.	So much as has not been repealed.
XV of 1869 ...	Prisoners' Testimony Act ...	So much of sections 15 and 16 as relates to process issued by a Civil Court.
IX of 1873 ...	Punjab Appeals' Act, 1873 ...	Sections 7, 9 and 10.
VI of 1874 ...	The Privy Council Appeals' Act, 1874 ...	The whole.

## C.—REGULATION REPEALED.

Madras Regulation XIV of 1816	Vakils ...	Section 27.
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## THE SECOND SCHEDULE.

(See Section 5.)

*Chapters and Sections extending to Mofussil Courts of Small Causes.*

PRELIMINARY: Sections 1, 2, 3, and 5.

CHAPTER	I.—Of the Jurisdiction of the Courts and <i>Res Judicata</i> , except section 11.
CHAPTER	II.—Of the place of Suing, except section 19, para. 4, and sections 21 to 24 (both inclusive).
CHAPTER	III.—Of Parties and their Appearances, Applications, and Acts.
CHAPTER	IV.—Of the Frame of the suit, except sections 42, 44 rule a, 45, 46 and 47.
CHAPTER	V.—Of the Institution of Suits.
CHAPTER	VI.—Of the Issue and Service of Summons, except section 77.
CHAPTER	VII.—Of the Appearance of the Parties and consequence of Non-appearance.
CHAPTER	VIII.—Section 111, Set-off.
CHAPTER	IX.—Of the Examination of the Parties by the Court, except section 119.
CHAPTER	X.—Of Discovery and the Admission, &c., of Documents.
CHAPTER	XII.—Section 155, para. 1, Judgment where either party fails to produce his evidence.
CHAPTER	XIII.—Of Adjournments.
CHAPTER	XIV.—Of the Summoning and Attendance of Witnesses.
CHAPTER	XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 188, both inclusive.
CHAPTER	XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, and 214.
CHAPTER	XVIII.—Sections 219, 220, and 221 of Costs.
CHAPTER	XIX.—Of the Execution of Decrees, sections 230 to 235 (both inclusive), 238 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 280 (both inclusive), 283, 284, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 302 (both inclusive), 335 to 343 (both inclusive).
CHAPTER	XXI.—Of the Death, Marriage, and Insolvency of Parties.
CHAPTER	XXII.—Of the Withdrawal and Adjustment of Suits.
CHAPTER	XXIII.—Of Payment into Court.
CHAPTER	XXIV.—Of requiring Security for Costs.
CHAPTER	XXV.—Of Commissions.
CHAPTER	XXVI.—Suits by Paupers.
CHAPTER	XXVII.—Suits by and against Government or Government servants.
CHAPTER	XXVIII.—Suits by Aliens and by and against Foreign Native Rulers, except the first paragraph of section 403.
CHAPTER	XXIX.—Suits by and against Corporations and Companies.
CHAPTER	XXX.—Suits by and against Trustees, Executors, and Administrators.
CHAPTER	XXXI.—Suits by and against Minors and Persons of unsound Mind.
CHAPTER	XXXII.—Suits by and against Military Men.
CHAPTER	XXXIII.—Interpleader.
CHAPTER	XXXIV.—Of Arrest and Attachment before Judgment.
CHAPTER	XXXVII.—Reference to arbitration, sections 506 to 522, both inclusive.
CHAPTER	XXXVIII.—Of Proceedings on Agreement of Parties.
CHAPTER	XLV.—Reference to High Court.
CHAPTER	XLVI.—Of Review of Judgment.
CHAPTER	XLVIII.—Miscellaneous, sections 642 to 649, both inclusive, sections 651, 652, 653, and 654.

## THE THIRD SCHEDULE.

(See Section 7.)

*Bombay Enactments.*

Bombay Regulation XXIX, 1827.	
" "	VII, 1830.
" "	I, 1831.
" "	XVI, 1831.
Act XIX of 1835.	
" XIII of 1842.	

## THE FOURTH SCHEDULE.

(See section 646.)

## FORMS OF PLEADINGS AND DECREES.

## A.—PART I. PLAINTS.

## No. 1.

## FOR MONEY LENT.

IN THE COURT OF

AT

Civil Regular No.

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , he lent the defendant      rupees repayable on demand [or on the      day of      ].
2. That the defendant has not paid the same, except      rupees paid on the day of      18      .

[If the plaintiff claims exemption from any law of limitation, say:—

3. The plaintiff was a minor [or insane] from the      day of      till the day of      ].

4. The plaintiff prays judgment for      rupees, with interest at      per cent. from the      day of      18      .

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore, interest is not claimed, the statement may be omitted.]

## No. 2.

## FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(Title.)

A. B., and G. H., the above-named plaintiffs, state as follows:—

1. That on the      day of      18      , at      , the defendant received      rupees [or a cheque on the      Bank for      Rs.] from one E. F. for the use of the plaintiffs.
2. That the defendant has not paid [or delivered] the same accordingly.
3. The plaintiffs pray judgment for      rupees, with interest at      per cent. from the      day of      18      .

## No. 3.

## FOR PRICE OF GOODS SOLD BY A FACTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , he and E. F., since deceased, delivered to the defendant [one thousand barrels of flour, five hundred mounds of rice, or as the case may be] for sale upon commission.
2. That on the      day of      18      [or, on some day unknown to the plaintiff, before the      day of      18      ], the defendant sold the said merchandise for      rupees.
3. That the commission and expenses of the defendant thereon, amount to      rupees.
4. That on the      day of      18      , the plaintiff demanded from the defendant the proceeds of the said merchandise.
5. That he has not paid the same.

[Demand of judgment.]



## No. 4.

## FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , the plaintiff agreed to buy and the defendant agreed to sell      bars of silver at      annas per tola of fine silver.
2. That the plaintiff procured the said bars to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant Rs.      annas therefor.
3. That each of the said bars contain only 1,200 tolas of fine silver.
4. That the defendant has not repaid the sum so overpaid.

[ Demand of judgment. ]

[ NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs. ]

## No. 5.

## FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , at the request [ or by the authority ] of the defendant, the plaintiff paid to one *E. F.*      rupees.
2. That, in consideration thereof, the defendant promised [ or became bound ] to pay the same to the plaintiff on demand [ or as the case may be. ]
3. That [ on the      day of      18      , the plaintiff demanded payment of the same from the defendant, but ] he has not paid the same.

[ Demand of judgment. ]

[ NOTE.—If the request or authority is implied, the plaint should state facts raising the implication. ]

## No. 6.

## FOR GOODS SOLD AT A FIXED PRICE AND DELIVERED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , *E. F.* of      deceased sold and delivered to the defendant [one hundred barrels of flour, or, the goods mentioned in the schedule hereto annexed, or, sundry goods].
2. That the defendant promised to pay      rupees for the said goods on delivery. [ or on the      day of      some day before the plaint was filed ].
3. That he has not paid the same.
4. That the said *E. F.* in his lifetime made his will, whereby he appointed the plaintiff executor thereof.
5. That on the      day of      187      the said *E. F.* died.
6. That on the      day of      probate of the said will was granted to the plaintiff by the Court of      .
7. The plaintiff as executor as aforesaid [ Demand of judgment ].

[ NOTE.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest. ]

## No. 7.

## GOODS SOLD AT A REASONABLE PRICE AND DELIVERED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , plaintiff sold and delivered to the defendant [sundry articles of house furniture] but no express agreement was made as to the price.
2. That the same were reasonably worth      rupees.
3. That the defendant has not paid the same.

[ Demand of judgment. ]

[ NOTE.—The law implies a promise to pay so much as the goods are reasonably worth. ]

## No. 8.

FOR GOODS DELIVERED TO A THIRD PARTY AT DEFENDANT'S REQUEST AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , plaintiff sold to the defendant [*one hundred barrels of flour*] and, at the request of the defendant, delivered the same to one E. F.
2. That the defendant promised to pay to the plaintiff       rupees therefor.
3. That he has not paid the same.

[Demand of judgment.]

## No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , plaintiff furnished to [*Mary Jones*] the wife of *James Jones* deceased, at her request, sundry articles of [*food and clothing*], but no express agreement was made as to the price.
2. That the same were necessary for her.
3. That the same were reasonably worth       rupees.
4. That the said *James Jones* refused to pay the same.
5. That the defendant is the executor of the last will of the said *James Jones*.

[Demand of judgment.]

## No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the plaintiff sold to E. F. of       deceased [*all the crops then growing on his farm in*].
2. That the said E. F. promised to pay the plaintiff       rupees for the same.
3. That he did not pay the same.
4. That the defendant is administrator of the estate of the said E. F.

[Demand of judgment.]

## No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , E. F. of       sold to the defendant [*all the fruit growing in his orchard in*], but no express agreement was made as to the price.
2. That the same was reasonably worth       rupees.
3. That the defendant has not paid the same.
4. That on the       day of       the High Court of Judicature at Fort William duly adjudged the said E. F. to be a lunatic and appointed the plaintiff committee of his estate with the usual powers for the management thereof.
5. The plaintiff as committee as aforesaid [Demand of judgment.]

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following:—]

4. That on the       day of       the Civil Court of       duly adjudged the said E. F. to be of unsound mind and incapable of managing his affairs and appointed the plaintiff Manager of his estate.
5. The plaintiff as Manager as aforesaid [Demand of judgment.]



## No. 12.

## FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , *E. F.* of       agreed with the plaintiff that the plaintiff should make for him [six tables and fifty chairs], and that the said *E. F.* should pay for the same upon delivery thereof rupees.
2. That the plaintiff made the said goods, and on the       day of       18       offered to deliver the same to the said *E. F.*, and has ever since been ready and willing so to do.
3. That the said *E. F.* has not paid for the same.
4. That on the       day of       the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the defendant committee of his estate.
5. The plaintiff prays judgment for       rupees with interest from the       day of       , at the rate of       per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

## No. 13.

## FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , plaintiff put up at auction sundry [articles of merchandise], subject to the condition that all goods not paid for and removed by the purchaser thereof, within [ten days] after the sale, should be re-sold by auction on his account of which condition the defendant had notice.
2. That the defendant purchased [one crate of crockery] at the said auction at the price of       rupees.
3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [ten days] thereafter, of which the defendant had notice.
4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [ten days] after the sale, nor afterwards.
5. That on the       day of       18       , at       , the plaintiff re-sold the said [crate of crockery], on account of the defendant, by public auction, for       rupees.
6. That the expenses attendant upon such re-sale amounted to       rupees.
7. That the defendant has not paid the deficiency thus arising, amounting to       rupees.

[Demand of judgment.]

[NOTE to § 4. Unless the seller agreed to deliver, the purchaser must fetch the goods. See Act IX of 1872, sec. 93.]

## No. 14.

## FOR THE PURCHASE-MONEY OF LANDS CONVEYED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the plaintiff sold [and conveyed] to the defendant [the house and compound No.       , in the city of       or, a farm known as       , in       or, a piece of land lying, &c.]
2. That the defendant promised to pay the plaintiff       rupees for the said [house and compound, or farm, or land].
3. That he has not paid the same.

[Demand of judgment.]

[NOTE.—Where there has been no actual conveyance, say, in § 1, "sold to the defendant the house, &amp;c., and placed him in possession of the same."]

## No. 15.

## FOR THE PURCHASE-MONEY OF IMMOVABLE PROPERTY CONTRACTED TO BE SOLD, BUT NOT CONVEYED.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house No.       in the town of       , or one hundred bighás of land in       , bounded by the East Indian railroad, and by other lands of the plaintiff] for,       rupees.

2. That on the       day of       18       , at       , the plaintiff tendered [ or, was ready and willing, and offered to execute ] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3. That the defendant has not paid the said sum.

[ *Demand of judgment.* ]

No. 16.

FOR SERVICES AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant [ hired plaintiff as a clerk, at the salary of       rupees per year ].

2. That from the [ said day ] until the       day of       18       , the plaintiff [ served the defendant as his clerk ].

3. That the defendant has not paid the said salary.

[ *Demand of judgment.* ]

No. 17.

FOR SERVICES AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That between the       day of       18       , and the       day of       18       , at       , plaintiff [ executed sundry drawings, designs and diagrams ] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth       rupees.

3. That the defendant has not paid the same.

[ *Demand of judgment.* ]

No. 18.

FOR SERVICES AND MATERIALS, AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , plaintiff [ furnished the paper for and printed one thousand copies of a book called       ] for the defendant, at his request [ and delivered the same to him ].

2. That the defendant promised to pay       rupees therefor.

3. That he has not paid the same.

[ *Demand of judgment.* ]

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , plaintiff built a house [ known as No.       , in       ], and furnished the materials therefor, for the defendant, at his request; but no express agreement was made as to the price to be paid for such work and materials.

2. That the said work and materials were reasonably worth       rupees.

3. That the defendant has not paid the same.

[ *Demand of judgment.* ]



## No. 20.

## FOR RENT RESERVED IN A LEASE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant entered into a covenant with the plaintiff, under their hands, a copy of which is hereto annexed.

[Or state the substance of the agreement.]

2. That the defendant has not paid the rent of the [month] ending on the day of 18, amounting to rupees.

[Demand of judgment.]

## Another Form.

1. That the plaintiff let to the defendant a house No. 27 Chowringhee for seven years to hold from the day of 187 at rupees a year, payable quarterly.
2. That of such rent quarters are due and unpaid.

[Demand of judgment.]

## No. 21.

## FOR USE AND OCCUPATION AT A FIXED RENT.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the day of 18, at , the defendant hired from the plaintiff [the house No. , street], at the rent of rupees, payable on the first days of .
2. That the defendant occupied the said premises from the day of 18 to the day of 18.
3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18.

[Demand of judgment.]

## No. 22.

## FOR USE AND OCCUPATION AT A REASONABLE RENT.

(Title.)

*A. B.*, the above-named plaintiff, executor of the will of *X. Y.*, deceased, states as follows:—

1. That the defendant occupied the [house No. , street], by permission of the said *X. Y.*, from the day of 18, until the day of 18, and no agreement was made as to payment for the use of the said premises.
2. That the use of the said premises for the said period was reasonably worth rupees.
3. That the defendant has not paid the same.
4. The plaintiff as such executor as aforesaid prays judgment for rupees.

## No. 23.

## FOR BOARD AND LODGING.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That from the day of 18, until the day of 18, the defendant occupied certain rooms in the house [No. , street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance and other necessaries.
2. That in consideration thereof, the defendant promised to pay, [or that no agreement was made as to payment for such meat, drink, attendance or necessaries, but the same were reasonably worth] the sum of rupees.
3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 24.

## FOR FREIGHT OF GOODS.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , plaintiff transported in [his barge, *or otherwise*] [one thousand barrels of flour, *or* sundry goods], from      to      , at the request of the defendant.
2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon. [Or, that no agreement was made as to payment for such transportation, but that such transportation was reasonably worth      rupees.]
3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 25.

## FOR PASSAGE-MONEY.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , plaintiff conveyed the defendant [in his ship, called the      ] from      to      at his request.
2. That the defendant promised to pay the plaintiff      rupees therefor. [or that no agreement was made as to the price of the said passage; but that the said passage was reasonably worth      rupees.]
3. That the defendant has not paid the same.

[Demand of judgment.]

## No. 26.

## ON AN AWARD.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of *E. F.* and *G. H.*, as arbitrators [or, entered into an agreement, a copy of which is hereto annexed.]
2. That on the      day of      18      , at      , the said arbitrators awarded that the defendant should [pay the plaintiff      rupees.]
3. That the defendant has not paid the same.

[Demand of judgment.]

[NOTE.—This will apply where the agreement to refer is not filed in Court.]

## No. 27.

## ON A FOREIGN JUDGMENT.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , in the State [or Kingdom] of      , the      Court of that State [or Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff      rupees, with interest from the said date.
2. That the defendant has not paid the same.

[Demand of judgment.]



## PLAINTS UPON INSTRUMENTS FOR THE PAYMENT OF MONEY ONLY.

No. 28.

ON AN ANNUITY BOND.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the      day of      18      , at      , the defendant by his bond became bound to the plaintiff in the sum of      rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff      rupees half yearly on the      day of      and the      day of      in every year during the life of the plaintiff, the said bond should be void.
2. That afterwards, on the      day of      187      , the sum of      rupees for of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

[Demand of judgment.]

No. 29.

PAYEE AGAINST MAKER.

(Title.)

A. B., the above-named plaintiff, states as follows :—

1. That on the      day of      , 18      , at      , the defendant by his promissory note now overdue, promised to pay to the plaintiff      rupees [days] after date.
2. That he has not paid the same [except      rupees, paid on the      day of      18      ].

[Demand of judgment.]

[NOTE.—Where the note is payable after notice, for paras. 1 and 2 substitute—]

1. That on the      day of      at      the defendant by his promissory note promised to pay to the plaintiff      rupees      months after notice.
2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.
3. That the said time for payment has elapsed, but the defendant has not paid the same.

[Where the notice is payable at a particular place, say—]

- 1.—That on the      day of      187      at      the defendant by his promissory note now overdue promised to pay to the plaintiff [at Messrs. A and Co., Madras]      rupees      months after date.
- 2.—That the said note was duly presented for payment [at Messrs. A. and Co.] aforesaid, but has not been paid.

## Written statement of the Defendant.

In the Court, &amp;c.

C. D., the above-named defendant, states as follows :—

1. The defendant made the note sued upon under the following circumstances: The plaintiff and defendant had for some years been in partnership as indigo manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, that the defendant should take over the whole of the partnership assets and liabilities and should pay the plaintiff the value of his share in the assets after deducting the liabilities.
2. The plaintiff thereupon undertook to examine the partnership books and enquire into the state of the partnership assets and liabilities; and he did accordingly examine the said books and make the said enquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000 and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000 and the liabilities of the firm largely exceeded the assets.
3. The misrepresentations mentioned in the second para. of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

## FIRST INDORSEE AGAINST MAKER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the       day of       18       , at       , the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.* [*or to E. F. & order*] rupees       [       days after date].
2. That the said *E. F.* indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[Demand of judgment.]

No. 31.

## SUBSEQUENT INDORSEE AGAINST MAKER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. [*As in the preceding form.*]
2. That the same was, by the indorsement of the said *E. F.* and of *G. H.* and *I. J.* [*or and others*] transferred to the plaintiff.

[Demand of judgment.]

No. 32.

## FIRST INDORSEE AGAINST FIRST INDORSEE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That *E. F.*, on the       day of       18       , at       , by his promissory note now overdue promised to pay to the defendant or order       rupees       months after date.
2. That the defendant indorsed the same to the plaintiff.
3. That on the       day of       18       the same was duly presented for payment, but was not paid.

[*Or state facts excusing want of presentment.*]

4. That the defendant had notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

No. 33.

## SUBSEQUENT INDORSEE AGAINST FIRST INDORSEE; THE INDORSEMENT BEING SPECIAL.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E. F.* a promissory note, now overdue, made [*or purporting to have been made*] by one *G. H.*, on the       day of       18       , at       , to the order of the defendant, for the sum of       rupees [payable       days after date].

2. That the same was by the indorsement of the said *E. F.*, [and others] transferred to the plaintiff. [*Or, that the said E. F. indorsed the same to the plaintiff.*]

- 3, 4 and 5. [*Same as 2, 3 and 4 of the preceding form.*]

[Demand of judgment.]



## No. 34.

## SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to him a promissory note, now overdue, made [or purporting to have been made] by one *E. F.*, on the      day of      18      , at      , to the order of one *G. H.*, for the sum of      rupees [payable      days after date], and indorsed by the said *G. H.* to the defendant.

2, 3 and 4. [As in No. 33.]

[Demand of judgment.]

## No. 35.

## SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That a promissory note, now overdue, made [or purporting to have been made] by one *E. F.*, on the      day of      18      , at      , to the order of one *G. H.*, for the sum of      rupees [payable      days after date], and indorsed by the said *G. H.* to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.

2, 3 and 4. [As in No. 33.]

[Demand of judgment.]

## No. 36.

## SUBSEQUENT INDORSEE AGAINST MAKER, FIRST AND SECOND INDORSER.

IN THE COURT OF

AT

Civil Regular No.

*A. B.* of

against

*C. D.* of*E. F.* of

and

*G. H.* of*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , the defendant, *C. D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*,      rupees [      months after date].
2. That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.
3. That on the      day of      18      , the same was presented [or state facts excusing want of presentment] to the said *C. D.* for payment, but was not paid.
4. That the said *E. F.* and *G. H.* had notice thereof.
5. That they have not paid the same.

[Demand of judgment.]

## No. 37.

## DRAWER AGAINST ACCEPTOR.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him      rupees [      days after date, or sight thereof].
2. That the defendant accepted the said bill. [If the bill is payable at a certain time after sight, the date of acceptance should be stated, otherwise it is not necessary.]
3. That he has not paid the same.
4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[Demand of judgment.]

[NOTE.—Where the bill is payable to a third party, for paras. 1, 3, 5, say:—]

1. That on &c., at &c., by his bill of exchange, now overdue, directed to the defendant the plaintiff required the defendant to pay to *E. F.* or order      rupees      months after date.
2. That the plaintiff delivered the said bill to the said *E. F.* on      .
3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

## PAYEE AGAINST ACCEPTOR.

(Title).

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , the defendant accepted a bill of exchange, now overdue, made [ *or* purporting to have been made ] by one *E. F.*, on the day of      18      , at      , requiring the defendant to pay to the plaintiff      rupees      after sight thereof.
2. That he has not paid the same.

[ *Demand of judgment.* ]

No. 39.

## FIRST INDORSEE AGAINST ACCEPTOR.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , the defendant accepted a bill of exchange, now overdue, made [ *or* purporting to have been made ] by one *E. F.*, on the day of      18      , at      , requiring the defendant to pay to the order of one *G. H.*      rupees      after sight thereof.
2. That the said *G. H.* indorsed the same to the plaintiff.
3. That the defendant has not paid the same.

[ *Demand of judgment.* ]

No. 40.

## SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. [ *As in the preceding form, to the end of art. 1.* ]
2. That by the indorsement of the said *G. H.* [ and others ], the same was transferred to the plaintiff.
3. That the defendant has not paid the same.

[ *Demand of judgment.* ]

No. 41.

## PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff      rupees [      days after sight ].
2. That on the      day of      18      , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[ *Demand of judgment.* ][ *NOTE.*—Notice of dishonour by non-acceptance must be given at once.



## No. 42.

## FIRST INDORSEE AGAINST FIRST INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the      day of      18      , at      , requiring one *G. H.* to pay to the order of the defendant      rupees      [*days*] after sight [*or* after date, *or* at sight] thereof, [and accepted by the said *G. H.* on the      day of      18      .]
2. That on the      day of      18      , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

## No. 43.

## SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E. F.*, a bill of exchange, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the      day of      18      , at      , requiring one *I. J.* to pay to the order of the defendant      rupees      [*days*] after sight thereof [*or otherwise*], and accepted by the said *I. J.* on the      day of      18      . [This clause may be omitted, if not according to the fact.]
2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.
3. That on the      day of      18      the same was presented to the said *I. J.* for payment, and was dishonoured.
4. That the defendant had due notice thereof.
5. That he has not paid the same.

[Demand of judgment.]

## No. 44.

## SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the      day of      18      , at      , requiring one *G. H.* to pay to the order of *I. J.*      rupees      [*days*] after sight thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant.
2. That on the      day of      18      , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

## No. 45.

## SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(Title.)

*A. B.*, the above-named plaintiff, states as follows:—

1. That a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the      day of      18      , at      , requiring one *G. H.* to pay to the order of one *I. J.*      rupees      [*days*] after sight thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.
2. That on the      day of      18      , the same was presented to the said *G. H.* for payment, and was dishonoured.
3. That the defendant had due notice thereof.
4. That he has not paid the same.

[Demand of judgment.]

No. 46.

## INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

IN THE COURT OF

AT

Civil Regular No.

A. B. of

against

C. D. of

E. F. of

G. H. of

A. B., the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , the defendant, C. D., by his bill of exchange, now overdue, directed to the defendant E. F., required the said E. F. to pay to the order of the defendant G. H.,      rupees [      days after sight thereof].

2. That on the      day of      18      , the said E. F. accepted the same.

3. That the said G. H. indorsed the same to the plaintiff.

4. That on the      day of      18      , the same was presented to the said E. F. for payment, and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

[Demand of judgment.]

No. 47.

## PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , the defendant by his bill of exchange, required one E. F. to pay to the plaintiff in [London] pounds sterling, [sixty days] after sight thereof.

2. That on the      day of      18      , the same was presented to the said E. F. for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of      pounds sterling, at the time of the service of notice of protest on the defendant, was      rupees      annas.]

Wherefore the plaintiff demands judgment against the defendant for rupees, with [ten per centum] compensation and interest from the      day of 18      .

No. 48.

## PAYEE AGAINST ACCEPTOR.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That on the      day of      18      , at      , one E. F., by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff      rupees after date [or      days after sight] thereof.

2. That on the      day of      18      , the defendant accepted the said bill.

3. That he has not paid the same.

[Demand of judgment.]

[NOTE.—This form omits to state the delivery of the bill to the plaintiff or his title to sue. See *Churchill v. Gardner*, 7 T. R. 506.]



## No. 49.

## ON A MARINE [OPEN] POLICY, ON VESSEL LOST BY PERILS OF THE SEA.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [or, had an interest in] the ship at the time of its loss, as hereafter mentioned.
2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [or, which the plaintiff then promised to pay], executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [or, whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during its next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees].
3. That the said vessel, while proceeding on the voyage mentioned in the said policy, was, on the day of 18 , totally lost by the perils of the sea [or otherwise].
4. That the plaintiff's loss thereby was rupees.
5. That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.
6. That the defendants have not paid the said loss.

[Demand of judgment.]

## No. 50.

## ON CARGO, LOST BY FIRE:—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [or, had an interest in] [one hundred bales of cotton] on board the ship at the time of its loss as hereafter mentioned.
2. That on the day of 18 , at , the defendant, in consideration of rupees which the plaintiff then paid [or, promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed; [or, whereby it promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; or, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should exceed per centum of the whole value of the goods].
3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire.

4 and 5. [As in paragraphs 5 and 6 of the last preceding Form.]

[Demand of judgment.]

## No. 51.

## ON FREIGHT:—VALUED POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff had an interest in the freight to be earned by the ship [ ] on her voyage from to , at the time of her loss as hereafter mentioned, and that a large quantity of goods was shipped upon freight in her at that time.
2. That on the day of 18 , at , the defendant, in consideration of rupees to it paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [or state its tenor, as before].
3. That the said vessel, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].
4. That the plaintiff has not received any freight from the said vessel, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [As in Form No. 50.]

[Demand of judgment.]

## No. 52.

## FOR A LOSS BY GENERAL AVERAGE.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [or, had an interest in] [one hundred bales of cotton] shipped on board a vessel called the Y. Z., from to , at the time of the loss hereafter mentioned.
2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [or state its tenor, as before.]
3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea, that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.
4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.
5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.
6. That the defendant has not paid the said loss.

[Demand of judgment.]

## No. 53.

## FOR A PARTICULAR AVERAGE LOSS.

(Title.)

A. B., the above-named plaintiff, states as follows:—

- 1 and 2. [As in the preceding Form.]
3. That on the day of 18 , while on the high seas, the seawater broke into the said ship, and damaged the said [cotton] to the amount of rupees.
- 4 and 5. [As in paragraphs 5 and 6 of the preceding Form.]

[Demand of judgment.]

## No. 54.

## ON A FIRE INSURANCE POLICY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff [was the owner of, or] had an interest in a [dwelling-house, known as No. , street, in the city of ,] at the time of its destruction [or, injury] by fire as hereinafter mentioned.
2. That on the day of 18 , at , in consideration of rupees [to it paid], the defendant executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [or state its tenor].
3. That on the day of 18 , the said [dwelling-house] was totally destroyed [or, greatly damaged] by fire.
4. That the plaintiff's loss thereby was rupees.
5. That on the day of 18 , he furnished the defendant with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.
6. That the defendant has not paid the said loss.

[Demand of judgment.]